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The Solicitors' Journal

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PUBLIC NOTICES.

THE MEDICO-LEGAL SOCIETY.

(President: THE RIGHT HON. LORD RIDDELL.)

An Ordinary Meeting of the Society will be held at 11, Chandos-street, Cavendish-square, W.1, on Thursday, the 28th January, 1932, at 8.30 p.m. when a Paper will be read by Dr. L. A. WEATHERLY on:—

"THE LIBERTY OF THE SUBJECT FROM THE MEDICO-LEGAL ASPECT,"

which will be followed by a discussion.

Members may introduce guests to the meeting upon production of the Member's private card.

The meeting in March will take place on the 17th, and not the 24th, as previously arranged.

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5th January, 1932.

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The Solicitors' Journal

(ESTABLISHED 1857.)

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Current Topics.

A Judge's Legal Position.

IN THE current *Law Quarterly Review* Sir W. HOLDSWORTH gives reasons for his conclusion that the 20 per cent. abatement in the salaries of judges of the High Court (and, of course, of the Court of Appeal, and in the House of Lords) has no proper legal basis. The authority for the abatement is of course the National Economy Act, 1931, and an Order in Council made under it. The Act empowers His Majesty to make such Orders, with a view to economy, "for the modification or termination of statutory or contractual rights, obligations and restrictions subsisting at the date when the provisions of the Order take effect" (s. 1 (*d*)). Such Orders were to be made within a month of the Act, which was passed 30th September last. By an Order, no doubt then already prepared, and dated 1st October last, an abatement of 20 per cent. was made in salaries of £5,000 and over payable in respect of any office in His Majesty's service (St. R. & O. 1931, No. 810, cl. 1 (1)). Put shortly, Professor HOLDSWORTH'S point is that judges do not hold offices in His Majesty's service, since they are independent of the Crown, and not subject to the Sovereign's orders, as JAMES I imagined them to be. The salaries in question, together with that of the Lord Chancellor, are now payable under s. 13 of the Judicature Act, 1925 (as modified, if so modified, by the later Act and Order), and their tenure of office is stated in s. 12. That tenure is, of course, during good behaviour, and subject to the power of removal by His Majesty upon address by both Houses of Parliament. This provision supersedes s. 75 of the Judicature Act, 1875, embodying those in the Act of Settlement (1700), 12 & 13 Wm. III, c. 2, and 1 Geo. III c. 23 (1760). It sharply distinguishes the case of judges from those of executive officers of the Crown, dismissible at pleasure, as ruled in *Dunn* v. *R.* [1896] 1 Q.B. 116. A contract between master and servant for the joint lives, and otherwise terminable only on the latter's misbehaviour, might be considered as highly unusual, but it is not absolutely inconsistent with the relationship. As to obedience, a judge could no more obey a sovereign who told him how to decide a case than, to take a humble instance, a gamekeeper could obey his master who directed him to shoot grouse at Midsummer, or pheasants at Michaelmas. Nevertheless, judges do go to assizes in obedience to Royal Commission, and their courts are the King's Courts. As Professor HOLDSWORTH observes, it would hardly be possible for a judge in office to take the point, though perhaps the representatives of a deceased judge might do so in respect of arrears of salary if objection on the ground of partiality to another judge trying it were not taken by the Crown's advisers. A successful result, however, would no doubt be followed by another short Act of Parliament to nullify it, so would be of little practical importance to present and future judges.

A Microphone in Court.

The Times records that an experiment was recently made in Manchester City Police Court in the use of the microphone, fitted up in the witness-box, on the magistrate's bench, the clerk's table, the solicitors' benches, the chief court officer's desk, and in the dock. Each of these contrivances was coupled with a "monitor-box," to control the recording, and cut out extraneous or irrelevant matter. Each microphone can be controlled separately. It is further stated that the evidence, statements, or speeches can be reproduced a few moments later on loud speakers or on head-phones if required, and that, apart from such reproduction, the proceedings can be electro-magnetically recorded on a steel tape, which will form a permanent record. So far as audibility is concerned, those who have suffered from mumbling judges and indistinct witnesses will welcome the experiment, and hope for its success. On the question of reproduction, perhaps we may recall our conjecture nearly five years ago "Whether the mechanical contrivance could or should be placed in a court as an alternative to the record of a shorthand writer is a question which in some not far distant day may be a practical one" (see "The Dictaphone and Telegraphone in Evidence," 71 SOL. J. 217). Since then the "talkies" have developed, and, no doubt, a talkie film might be made of a trial in a court of justice as in a film studio, though perhaps it is hardly to be supposed that judges, counsel, witnesses, etc., would allow their faces to be made up in a bright orange tone for the purpose. On an appeal from a "talkie" trial, the Court of Appeal could study the demeanour of witnesses, and so an old excuse for dismissing an appeal from a witness action would go by the board. The Master of the Rolls might perhaps be cheered by the fact that his title had become quite apposite again. As to how far so exalted a person might be bound by the rules relating to the storage of films, query. Much care would certainly have to be taken in particular trials that the microphones recording counsels' speeches and questions were turned off while choleric leader and explosive junior were barking off one of their well-known back-chats to each other. Often, too, prisoner's observations on his sentence, couched in cogent and pungent language, would be *indigna relatu*.

The Lever Case.

AS ALL experienced practitioners know, it is sometimes the simplest issues which cause the greatest conflicts of judicial opinion. A striking example of this occurred recently in *Bell and Another* v. *Lever Bros. Ltd. and Others* (76 SOL. J. 50), in which the House of Lords, by a majority of three to two, reversed the decision of a unanimous Court of

Appeal, which had upheld a judgment of Mr. Justice WRIGHT (74 SOL. J., 824). The claim was for damages for alleged fraudulent misrepresentation, breach of duty and breach of contract in respect of the employment of two former directors of the Niger Company Limited by entering into private cocoa transactions on their own behalf and without the knowledge or assent of their employers. There was a further claim for the return of £30,000 and £20,000 paid under agreements of March, 1929, to the two defendants respectively as compensation for the termination of their services when the Niger Company was amalgamated with the African and Eastern Trade Corporation. The jury's findings negatived fraud, but affirmed breach of duty by the defendants towards the plaintiffs in respect of the private cocoa transactions, for which they awarded the plaintiffs £1,365 damages. The jury also found that the plaintiffs were entitled to terminate the defendants' employment in January, 1928, and March, 1929, the dates of the transactions and the contract, and would have done so had they been aware of the transactions, and, moreover, would not have entered into the agreements. Mr. Justice WRIGHT held that the £30,000 and £20,000 should be returned on the ground that both parties were under the mistaken impression that their rights could be terminated only by payment of compensation. Lord Justice SCRUTTON in upholding this view declared that "the present law is, that where, at the time of making the contract, the circumstances were such that the continuance of a particular state of things was, in the contemplation of the parties, fundamental to the continued validity of the contract, and that state of things substantially ceased to exist without fault of either party, the contract became void from the time of the cessation." Lord BLANESBURGH was of opinion that the case of mutual mistake was not open to the respondents on the pleadings, but expressed himself as in agreement with Lord ATKIN and Lord THANKERTON on the question whether it was a ground for rescission in this case. Lord ATKIN reviewed the authorities, and held that it was not, and Lord THANKERTON agreed. They moreover reversed the Court of Appeal's decision that the compensation agreements were void for non-disclosure of their transactions by the directors, and held that they were not contracts *uberrimæ fidei*. Lord WARRINGTON OF CLYFFE and Lord HAILSHAM both dissented, holding that the contracts were void on the ground of mutual mistake. Thus, under our peculiar legal system, the respondents succeeded, although a majority of six to three experienced judges thought that they should fail.

Mutual Mistake.

IT WILL be recalled that the cases on mutual mistake upon which Lord Justiee SCRUTTON based his judgment in the *Lever Case* were the well-known Coronation Case, *Krell* v. *Henry* [1903] 2 K.B. 740, and the numerous cases in which it was followed, and *Metropolitan Water Board* v. *Dick, Kerr and Co.*, 62 SOL. J. 102 [1918] A.C. 119. In the former case it was held that the letting of a flat in Pall Mall for the two days on which it was announced that a Coronation procession would pass along that thoroughfare was made subject to the implied basis that the procession would take place on that date, and the contract was held discharged by the postponement of the procession. In *Metropolitan Water Board* v. *Dick, Kerr & Co., supra*, a contract to construct a reservoir in six years was held to be discharged owing to a compulsory stoppage of work two years after the making of the contract for a protracted period under the Defence of the Realm Act and Regulations. Lord Justice LAWRENCE and Lord Justice GREER in the *Lever Case* both held that the case "fell within that general class where the subject-matter of a contract had been held to be non-existent." Probably the latter class of cases more nearly approaches the facts of the *Lever Case*, as the former is really based on the doctrine of supervening impossibility and not of mistake, and in that class of case the contract is valid up to the moment when impossibility supervenes, and any money paid under the contract before that time cannot be recovered (48 SOL. J. 245; [1904] 1 K.B. 493). Another curious legal point arising out of the *Lever Case* is that had the directors involved been dismissed from office without a cause being assigned instead of receiving handsome sums of money as compensation they would not have been able successfully to maintain actions for wrongful dismissal, even though at the time of their dismissal their misconduct had not yet been discovered (*Boston Deep Sea Fishing and Ice Company* v. *Ansell* (1888), 39 Ch. D. 339). It would have been sufficient for the company to say that at the time of the dismissal they had a right to terminate their engagements summarily, even though that right was not known to them, and therefore the dismissal was valid. It seems extraordinary that under those circumstances contracts to pay compensation for the loss of offices to which the persons concerned had no right should be upheld. But, as Lord ATKIN pointed out, "it is of more importance that well-established principles of contract should be maintained than that a particular hardship should be redressed." On the questions whether there was a duty to disclose the misconduct and whether in default of such disclosure the contract was voidable, Lord ATKIN stated that he was aware of no authority which placed contracts of service within the limited category of contracts *uberrimæ fidei*. Though this is true of the contract of service it is certainly not true of the contract of agency. *Lord Selsey* v. *Rhodes*, 2 Sim. & St. 41; 25 R.R. 150; *Gwatkin* v. *Campbell* (1854), 1 Jur. N.S. 131; and *Dunne* v. *English* (1874), L.R. 18 Eq. 524, are sufficiently clear on this point. But probably they can be distinguished from the *Lever Case* on the ground that they were cases in which the agent was either selling his property to his principal or buying his principal's property.

Alleged Dismissal of a Witness from Employment.

A WOMAN who was called to give evidence in the Divorce Court recently complained to BATESON, J., as she stepped into the box, that her employer first forbade her to give evidence at all, and then, lifting this veto, summarily dismissed her. The judge, while expressing his readiness to deal with the man if he had the power, doubted whether he could do so effectively, since the witness was left free to testify. Obviously, however, if the woman's story had been true, she had been dismissed immediately after she had incurred his displeasure by proposing to obey the summons of the court. In *Rowden* v. *Universities Co-operative Association Ltd.* (1881), of which a note will be found 71 L.T.J. 373, one PATMAN, an employé of the defendants, and who had given evidence in support of the motion against them, received a letter from the company's general manager to suspend him from his duties, the manager admitting in it that he did so for that reason. On his behalf it was argued that, in suspending or dismissing a servant of the company, he merely exercised an undoubted legal right. KAY, J., however, observed that he could not conceive a grosser offence against a court than to endeavour to exercise a power, legal or illegal, in order to punish a witness for giving evidence. He was of opinion that a gross and flagrant contempt had been perpetrated, and would not hesitate to commit the man to prison unless he gave an undertaking to withdraw the suspension. In that case the person in contempt had assisted in his own condemnation by admitting that his act was caused by resentment at the servant's testimony. Where no such admission is made, the matter is more difficult, for a master must be free to dismiss an unsatisfactory servant at any time. Possibly a judge could find as a fact that the motive of a particular employer in dismissing a servant was to punish him or her for testifying in a court of justice, on which finding the contempt would be complete. In the present case it is understood that the employer later appeared before the court to explain that the servant was dismissed for good reasons quite unconnected with the case.

Accumulation of Income for Charitable Purposes.

DOWN to the date of the passing of the Statute of 39 & 40 Geo. III, c. 98 (generally known as the Thelluson Act) the law as to accumulation of *property*, whether subject to trusts for charitable or other objects, was that relating to perpetuities, which prescribes certain limits beyond which the vesting of absolute interests in property, both real and personal, may not be postponed.

But the law as to accumulations did not then restrict accumulation of *income* of property to a period equal in length to that during which the *corpus* might be tied up, and it was not until the case of *Thelluson* v. *Woodford*, 4 Ves. 112, came before the courts that this state of the law was brought into prominence.

To prevent accumulation of income beyond the period imposed on the tying up of absolute interests in the *corpus* of property, the above-mentioned Statute of 39 & 40 Geo. III, c. 98 (repealed and re-enacted by the Law of Property Act, 1925), was passed, by virtue of which income, whether arising from real or personal estate, could not be wholly or partially accumulated for any longer term than the following periods, namely :—

(1) The life of the grantor or settlor ; *or*

(2) The term of twenty-one years from the death of any such grantor, settlor, or in the case of a will, the testator ; *or*

(3) During the minority or respective minorities of any person or persons who should be living or in *ventre sa mère* at the time of the death of such grantor, settlor or testator ; *or*

(4) During the minority or minorities only of any person or persons who, under the deed or will during such accumulation, would, for the time being, if of full age, be entitled to the rents and profits. The above restrictions are reimposed by the Law of Property Act, 1925.

The repealed Act provided that income directed to be accumulated should, so far as the direction was void for excess, go to such person or persons as would have been entitled thereto if the accumulation had not been directed, and this provision is also contained in the repealing Act of 1925.

It will be noticed that the authorised accumulation is during any one of the four periods, but only for one of such periods ; but the Act and also the repealing Act of 1925 expressly exempted from its operation—

(1) Any provision for payment of debts ;

(2) Any provision for raising portions for children ;

(3) Any provision touching the produce of timber, provided the rule against perpetuities is not exceeded (*Ferrand* v. *Wilson*, 4 Hare, 344, at 377).

The view taken of the Statute of 39 & 40 Geo. III, c. 98, was that it was in some respects inaccurately worded, but was a legislative declaration of the validity of a trust for accumulation for a term of twenty-one years independently of enjoyment, and that there were many indirect modes, as by planting, management of underwood, etc., in which an accumulation, as extensive in amount, may be made and kept within the period which the law permits, as could have been by the more direct modes of limitation which the Statute virtually prohibits ; in short, for the periods allowed by the rule against perpetuities as it stood prior to the Statute (see *Bengough* v. *Edridge*, 1 Sim. 173, at p. 247).

These restrictions apply to instruments made on and after the 28th day of July, 1800 (the date of the passing of the Thelluson Act), but in the case of wills only where the testator was living and of testamentary capacity, after the end of one year from that date (Law of Property Act, 1925, s. 164 (3)).

The Law of Property Act, 1925, by s. 165, further enacts that "where accumulations of surplus income are made during a minority under *any statutory power or under the general law*, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Act, i.e., 1st January, 1926) to be taken into account in determining the periods for which accumulations are permitted to be made by the last preceding section (i.e., s. 164), and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid by reason of accumulations also having been made as aforesaid during such minority."

By s. 166 of the Act, sub-s. (1), restriction has been placed on accumulation for the purchase of land. This section replaces the Accumulations Act, 1892 (55 & 56 Vict., c. 58), repealed by the Law of Property Act, 1925, and provides that no person may settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land *only* for any longer period than the duration of the minority or respective minorities of any person or persons who, under the limitations of the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income so directed to be accumulated. This section does not, nor do the enactments which it replaces, apply to accumulations to be held as capital money for the purposes of the Settled Land Act, 1925, or the enactments replaced by that Act, whether or not the accumulations are primarily liable to be laid out in the purchase of land, and applies to settlements and dispositions made after the 27th June, 1892, the date of the passing of the Accumulations Act, 1892. (See sub-ss. 2 and 3.) Under the Accumulations Act, 1892, a direction to accumulate for the purchase of land was held a direction to accumulate for the "purchase of land only" within the meaning of that Act, and was consequently void (*In re Clutterbuck* [1901] 2 Ch. 285).

The statutory provisions contained in the Thelluson Act, 1800, and the Accumulations Act, 1892, were re-enacted by the Law of Property Act, 1925, and applied to charities, so that a direction to accumulate the income of a fund for any charitable purpose must not exceed the legal limit (*Martin* v. *Marghem*, 14 Sim. 230). In this case, where an accumulation, in order to carry out the charitable intention of the testator, must necessarily have exceeded the legal limit, the direction to accumulate was void, but as the testator had shown an intention to devote the fund to charity generally (what is termed "a general charitable intention"), a scheme was settled by the court for the administration of the fund for the benefit of the charity. Where, however, the accumulations were given in a form which enabled the trustees to spend the accumulations as *income*, or deal with them as they might think fit, the direction to accumulate the fund beyond the legal limit was held voidable only, and the charity entitled to put an end to the accumulation and demand payment of the fund with the accumulations (*Wharton* v. *Masterman* [1895] A.C. 200), and in a case where the accumulation directed exceeded the allowed term, and the rule against perpetuities did not apply, the direction was held to be good *pro tanto* (*Griffiths* v. *Vere*, 9 Ves. 127).

In *Forbes* v. *Forbes* (18 Beav. 552), where a charitable fund was bequeathed for the purpose of building a bridge, but was allowed to remain unapplied and to accumulate for thirty years, the accumulations were held to go along with the original bequest. The principles as to the applicability of the rule against perpetuities to charitable gifts are laid down in *Chamberlayne* v. *Brockett* (L.R. 8 Ch. 206), and are to the following effect. An immediate gift to a charity is valid, although the particular application of the fund directed by the will may not of necessity take effect within any assignable limit of time, or may never take effect at all except on the occurrence of events in their essence contingent and uncertain ; while, on the other hand, a gift in trust for a charity which is conditional upon a future and uncertain event is subject to the same rules as any other estate depending on its coming into existence upon a condition precedent.

Thus, where residue had been effectually devoted to charity as from the testator's death, a direction to postpone the payment of certain charitable annuities until the reserve fund reached £400 was not a condition precedent to the charitable gift coming into effect, but was only a direction as to the particular application of the charitable fund and intended to secure the beneficial working of the charity, and that the case fell within the first principle in *Chamberlayne* v. *Brockett, supra*; *In re Swain* [1905] 1 Ch. 669, at 676.

Statutory authority has been given to trustees for charitable purposes to form an accumulation or sinking fund out of income for discharging a mortgage debt, by s. 30 of the Charitable Trusts Amendment Act, 1855, under which section the Charity Commissioners, and in the case of educational charities the Board of Education (see Board of Education Act, 1899, and Orders in Council 1900–1902), may direct trustees or persons administering the charity to discharge the principal debt, or any part thereof, by such yearly or other instalments within thirty years from the date of the security as to the Charity Commissioners, or Board of Education, as the case may be, may seem fit, or to form an accumulation or sinking fund out of the income of the charity for discharging the principal debt or any portion thereof within the same period, and to give directions as to the investment and accumulation of such fund.

Insurance.

MISSTATEMENTS IN PROPOSAL FORMS.

Companies dealing in life and accident insurance usually issue what is termed a "proposal form" in which they ask questions about matters deemed material to the risk. This form, which must be signed by the person seeking to effect an insurance, the proposer, contains a promise that the answers supplied therein are true and the basis of the contract between the parties. It follows, therefore, that, if the proposer fills in an answer false in any material particular, it will vitiate a policy issued on the faith of it.

Occasionally, however, a proposal form is falsely filled in by a canvasser employed to obtain proposals for company, and delicate questions then arise as to the liability of the company upon the resultant policy. "There then comes a conflict . . . between the desire to hold the insurer, who employs an agent to bring him business, liable for anything that agent does in procuring business, and, on the other hand, the contention that a man who signs a promise that certain written statements are true and the basis of his contract, which statements, if he read them before signing, he would know to be untrue, cannot claim to vary his contract by omitting that promise and misstatement," per Scrutton, L.J., in *Newsholme Bros.* v. *Road Transport and General Insurance Co.* [1929] 2 K.B. 356, at p. 363.

The facts of the *Newsholme Case* were as follows: A proposal form for the insurance of a motor-bus was signed by the proposer, but the answers to the questions therein, which were warranted to be true and to form the basis of the contract, were filled in by the insurance company's agent who, although told the true facts, wrote, for some unexplained reason, answers which were untrue in a material respect. The agent was not authorised by the company to fill in proposal forms, and it did not appear that the company knew that he had in fact done so. His duties were to procure persons to effect insurances and to see, as far as he could, that the proposal forms were correctly filled up; he was not authorised to give a cover note or to enter into a policy of insurance. A policy of insurance was issued to the proposer, and during its currency he made a claim under it, but the company repudiated liability on the ground of the untrue statements in the proposal form.

The Court of Appeal (Scrutton, Greer and Russell, L.JJ.) held that the agent in filling up the proposal form was merely the amanuensis of the proposer, that the knowledge of the true facts by the agent could not be imputed to the company, and, therefore, that the company was entitled to repudiate liability. Further, Scrutton, L.J., held that a man who has signed, without reading it, a document which he knows to be a proposal for insurance, and which contains statements in fact untrue and a promise that they are true and are to be the basis of the contract, cannot escape the consequences of his negligence by saying that the person asked to fill it up for him was the agent of the insurance company.

The tests to be applied in these cases are: (1) What is the canvasser's authority as agent of the company; and (2) how far is the canvasser's knowledge to be imputed to the company? Applying these tests without reference to decided cases, the decision in the *Newsholme* case is manifestly correct. Indeed, no doubt could be felt were it not for an earlier decision of the Court of Appeal in *Bawden* v. *London, Edinburgh and Glasgow Assurance Co.* [1892] 2 Q.B. 534, which must be either distinguished or rejected. The court, in the *Newsholme Case*, preferred the decision of Wright, J., in *Biggar* v. *Rock Life Assurance Co.* [1902] 1 K.B. 516.

In *Biggar's Case* a policy of insurance against accidental injury was effected with an insurance company through their local agent. The proposal form was filled in by the agent, many of the answers filled in by him being false in material respects; the false answers were inserted without the knowledge or authority of the proposer who signed the proposal form without reading it. The proposal contained a declaration in which the proposer agreed that the statements in the proposal should be the basis of the policy, and the policy contained a proviso that it was granted on the express condition of the truthfulness of the statements in the proposal. Shortly after the payment of the premium, the insured was accidentally injured.

Wright, J., held that in filling in the false answers in the proposal form the agent was acting, not as agent of the company, but as agent of the proposer; that it was the duty of the proposer to read the answers in the proposal form before signing it, and that he must be taken to have read and adopted it; and that, therefore, the policy was void. In his judgment, he said: "Cooper (the canvasser) was an agent to receive proposals for the company. He may have been an agent, as Lindley and Kay, L.JJ., put it in *Bawden* v. *London, Edinburgh and Glasgow Assurance Co.*, to put the answers in form; but I cannot imagine that the agent of the insurance company can be treated as their agent to invent answers to the questions in the proposal form. For that purpose, it seems to me, if he is allowed by the proposer to invent the answers and to send them in as the answers of the proposer, that the agent is the agent not of the insurance company but of the proposer."

Whatever misgivings one may entertain as to the application of the decision in *Bawden's Case*, it is clear that the facts in *Biggar's Case* are practically on all fours with those in the *Newsholme Case*. The facts in the *Newsholme Case* are stronger in favour of the insurance company, for, whereas in *Biggar's Case* there is no evidence as to the scope of the canvasser's agency, in the *Newsholme Case* "the agent was not authorised by the company to fill in proposal forms." The decision as to the scope of the canvasser's authority must rest upon the facts of each individual case, for an insurance company may authorise its canvassers to fill in proposal forms. There is, however, no general rule that it is the duty of a canvasser to fill in proposal forms, or that it is within the scope of his authority as agent of a company to do so. But, in any case, to use the words of Scrutton, L.J., in the *Newsholme Case*, at p. 369, "I find considerable difficulty in seeing how a person who fills up the proposal can be the agent of the person to whom the proposal is made."

The facts in *Bawden's Case* were as follows: BAWDEN effected an insurance with the defendant company through their agent QUIN against accidental injury. The proposal contained a statement by the assured that he had no physical infirmity, and that there were no circumstances that rendered him peculiarly liable to accidents, and it was agreed that the proposal should form the basis of the contract between the parties. At the time when he signed the proposal for the insurance, the assured was blind in one eye, a fact of which the defendants' agent was aware, though he did not communicate it to the company.

The Court of Appeal held that the knowledge of QUIN, was, under the circumstances, the knowledge of the company, and that the company was liable upon the policy. Lord ESHER, M.R., said: "He (QUIN) went to a man who had only one eye and persuaded him to make a proposal to the company, which the company might then either accept or reject. He negotiated and settled the terms of the proposal. He saw that the man had only one eye. The proposal must be construed as having been negotiated and settled by the agent with a one-eyed man. In that sense the knowledge of the agent was the knowledge of the company."

In the *Newsholme Case*, SCRUTTON, L.J., takes these objections to the imputation of knowledge to the company: (1) In commercial matters the doctrine of constructive notice is not favoured (see *Manchester Trust* v. *Furless* [1895] 2 Q.B. 539); (2) Where knowledge is to be imputed to an artificial person, (*a*) it must be the knowledge of the directors who deal with the company's rights, and (*b*) the knowledge of a person who acquires it in a breach of duty, and is guilty of a breach of duty in respect of it, is not to be imputed to a company to whom, from the hypothesis, he would be very unlikely to disclose it in fact (see *Houghton's Case* [1928] A.C. 1); (3) Where the company's agent, at the request of the proposer, fills in answers in purported conformity with information supplied by the proposer, (*a*) if the answers are untrue and he knows it, he is committing a fraud which prevents his knowledge being the knowledge of the company, (*b*) if the answers are untrue, but he does not know it, he has no knowledge which can be imputed to the insurance company.

These objections would appear to be applicable to the facts in *Bawden's Case*. Knowledge acquired by an agent while acting within the scope of his authority can be imputed to his principal, unless he is acting fraudulently towards his principal. Assuming, then, that QUIN, in *Bawden's Case*, was within the scope of his authority in interviewing BAWDEN, and the judgments indicate that he was, knowledge of BAWDEN'S defect can be imputed to the company. But it is also indicated that QUIN had authority to fill in proposal forms, and it is difficult to appreciate any distinction between inaccurately filling in an answer (The *Newsholme Case*) and omitting to fill in an answer which, if filled in truthfully, would disclose a matter very material to the risk (*Bawden's Case*). QUIN either knew that BAWDEN had only one eye or he did not. If he knew, and failed to fill it in on the form, was he not acting fraudulently towards the company? If it is fraudulent to fill in an inaccurate answer knowing the truth, it is submitted that it is equally fraudulent to omit to fill in an answer knowing the truth and knowing that, if the truth is put down, it will disclose a very material circumstance.

In both cases the agents had knowledge of matters which were not disclosed in the proposal forms. QUIN, in *Bawden's Case*, learned by his own observation that BAWDEN had only one eye. QUIN was within the scope of his authority in interviewing BAWDEN. GREER, L.J., in the *Newsholme Case*, referring to *Bawden's Case*, said: "I think that case must be deemed to have been decided on the ground that the policy was interpreted as one effected with a one-eyed man, and that the agent, having authority to see the proposer and get a proposal form from him, the company was fixed with notice of what the agent saw at the interview." In the *Newsholme Case*, presumably the agent was within the scope of his authority in interviewing the proposer, and it was from statements of the proposer that the true answers appeared. It is difficult to appreciate any distinction between knowledge gained by sight and knowledge gained by hearing. If the knowledge of the agent in the *Newsholme Case* was not the company's knowledge, it is submitted that the knowledge of the agent in *Bawden's Case* was wrongly imputed to the company. SCRUTTON, L.J., expresses his doubt in the following words: "It appears to me that the facts in this present case are not substantially similar with those in *Bawden's Case*, so as to make the conclusions of law drawn from them in the latter case binding on this court, *even if those conclusions are not inconsistent with the two decisions in the House of Lords to which I have referred* (*Blackburn, Low & Co.* v. *Vigors* (1887), App. Cas. 531, and *Houghton's Case* [1928] A.C. 1)."

GREER, L.J., in the *Newsholme Case* distinguished *Bawden's Case* in this way: It is a well-defined principle that once a contract is reduced to writing, the written contract alone can be looked at to determine the rights of the parties, and anything said during the negotiations ceases to have any legal validity. The Lord Justice observed: "In cases like the present, therefore, it does not seem to matter whether the verbal statements which are relied upon are made to a person in the position of Mr. WILLEY (the company's agent) or are made to the directors of the company. In either case they could not affect the contract which is wholly contained in the policy of insurance with its incorporated proposal form." Dealing with *Bawden's Case*, he said: "I think *Bawden's Case* is an application of the rule that in construing any written instrument, the court is entitled to take into account the surrounding circumstances, and the surrounding circumstances may be such as to enable the court to put a special meaning on the words used in the contract . . . the court seems to have considered itself in that case justified in putting on the words of the contract a meaning which was not their literal meaning, but which the court considered was their reasonable interpretation as applied to a one-eyed man." But even this line of demarcation requires as a condition precedent the knowledge of the company that they were dealing with a one-eyed man.

In spite of the distinctions suggested by the Court of Appeal in the *Newsholme Case* between that case and *Bawden's Case*, a different conclusion would probably be arrived at, were the courts to consider the facts of *Bawden's Case* to-day. As the matter stands, however, only a decision of the House of Lords can settle how far the principles enunciated in *Bawden's Case* are applicable to-day.

In conclusion, it is submitted that the principles of law applicable to these cases are as follows:—

(1) The authority of the agent is defined primarily by reference to the terms of his appointment. If, however, there is silence upon the point, there is no general principle that an agent has authority to fill up proposal forms, though, presumably, he has an implied authority to interview prospective clients. If the agent is the agent of the assured to fill in the proposal forms, that would appear to conclude the matter in favour of the company, and they are entitled to repudiate a policy issued on the faith of false answers filled in by the agent. If the agent is agent of the company to fill in proposal forms, then it is a question of how far the agent's knowledge is to be imputed to the company.

(2) Knowledge gained by an agent while acting within the scope of his authority may be imputed, *primâ facie*, to his principal. Therefore, if the agent gains knowledge while acting within the scope of his authority from the insurance company, that knowledge is to be imputed to the company. But the law is chary of imputations to an artificial person, and in commercial matters the doctrine of

constructive notice is not favoured. Further, if the agent is acting fraudulently towards his principal, knowledge gained by that agent ceases to be imputable to the principal. It is submitted that the agent in *Bawden's Case* was acting fraudulently and therefore that his knowledge of the "blind eye" should not have been imputed to the company.

(3) Apart altogether from these two tests, SCRUTTON, L.J., in the *Newsholme Case* held that a person who has signed, without reading it, a proposal form which contains false answers and a promise that they are true and the basis of the contract, cannot escape the consequences of his negligence by saying that the person asked to fill in the form was the agent of the company. GREER, L.J., applied the principle that, when a contract is reduced to writing, only the writing, and not statements made during negotiations, must determine the rights of the parties.

Premature Claim to Goodwill Compensation.

MR. S. P. J. MERLIN, in his articles on the Landlord and Tenant Act, 1927, stated in 72 SOL. J., at p. 705, that "subject to numerous exceptions, limitations and provisions, s. 4 provides a tenant of business premises, *on quitting* his holding, with certain rights to monetary compensation for the loss of any 'goodwill' which he may have created." The same author, at p. 707, pointed out that the policy of the Act of 1927 was to safeguard a tenant in an indirect way from having extortionate demands made upon him *at the end* of his lease for an unfair increase of rent. The words in italics are ours, and have been specially emphasised to indicate a fact which would doubtless be tolerably apparent without particular stress, namely, that it is not until the tenancy *has expired* that the tenant is entitled to bring an action for compensation for goodwill under s. 4. The dictates of common sense alone seem sufficient to justify this view, while the wording of the section itself provides that the tenant shall "be entitled at the termination of the tenancy on quitting the holding, to be paid by his landlord compensation for goodwill if he proves . . ." etc. In a recent appeal from a decision of Judge TURNER, Westminster County Court, however, the question at issue, which Mr. Justice TALBOT described as raising a point of practice of some importance, was whether a tenant whose tenancy had not in fact expired was entitled to bring an action for compensation for goodwill. In that case (*Smith* v. *Metropolitan Properties Co. Ltd.*, 75 Sol. J. 813) premises in Chancery-lane and Bishop's-court had been used by the plaintiff for the business of a restaurant. The lease, of which the plaintiff was the assignee, was a fourteen years' one, granted by the defendants and beginning on the March quarter day, 1919. The plaintiff, who was still in possession of the premises as assignee, issued a summons in the county court on the 27th April, 1931, claiming £1,000 compensation for goodwill from the defendants. The county court judge held that the action was not premature and was maintainable. On appeal by the defendants the Divisional Court (Mr. Justice TALBOT and Mr. Justice MACNAGHTEN) reversed that decision, being clearly of opinion that the right of the tenant to recover compensation did not arise until the end of the tenancy. As Mr. Justice TALBOT pointed out, if proof of goodwill could be made before compensation became payable then the words of s. 4, "if he proves," might have been expected to be "if he proves or has proved." However, although, as already indicated, the plaintiff's claim would appear to be somewhat unpromising, there was, in fact, an apparently substantial point on which he based his case. He said that in an application under s. 5 of the Act the court might in certain cases refuse to grant a new lease and grant compensation instead, and since the application for a new lease must necessarily be made before the expiration of the old one he contended therefore that the Act clearly contemplated the assessment of compensation before it was due. An ingenious argument, but one not accepted by the court, who, in allowing the appeal, refused to imply a provision for pre-assessment in s. 4, which, they said, must be given the meaning which it apparently bore. Several things, indeed, may occur before the actual expiration of a lease of business premises which would render highly undesirable a premature valuation of the goodwill. The goodwill itself, for example, might substantially increase in the interval between the premature assessment and the ultimate expiration of the lease. In that quite likely event was it to be said that the outgoing tenant should be entitled to additional compensation in respect of the increased value of the goodwill during the interval? Clearly an impracticable situation! Again, the ownership of the property might change hands, perhaps more than once, between the assessment and the expiration of the lease. The person by whom compensation was payable under the section was the landlord at the end of the term, who obviously could not be ascertained until the tenancy had expired. It seems fairly safe to prophesy that the courts will not be troubled with another claim of this nature.

Disadvantage of Similar Names.

THE fact that different persons have identically similar names is not only sometimes a source of embarrassment but occasionally leads to litigation. Thus, in *Cooper and Wife* v. *Hirst, Kidd & Rennie, Ltd.* (decided at Manchester Assizes on 1st December, 1931), the plaintiffs claimed damages for libel against the defendants, who were the proprietors of a newspaper called *The Oldham Chronicle*, in respect of an advertisement inserted by the defendants in their newspaper on 8th July, 1931, which ran as follows: "I, Harold Cooper, will not be responsible for any debts unless personally contracted on or after this date." The above advertisement was in fact inserted by one Harold Cooper of 91, West Hamstreet, Oldham, whereas the male plaintiff, whose name was also Harold Cooper, resided with his wife at 263, Abbeyhills-road, Oldham, being a more fashionable quarter of the town than that in which the person who inserted the advertisement resided. The plaintiffs alleged by way of innuendo that the male plaintiff prohibited his wife from pledging his credit; but there was no suggestion that there was any intention to injure or annoy the plaintiffs or to refer to them in any way. The plaintiffs proved that some of their acquaintances understood the advertisement from the male plaintiff to mean that he considered that his wife spent too much and had taken this step to protect himself from her extravagance. The defence was (1) that the advertisement was incapable of having any defamatory meaning, and (2) that the advertisement—even if capable of containing a defamatory meaning—did not refer to the plaintiffs. Mr. Justice TALBOT held that both these grounds of defence succeeded and that there was therefore no cause of action to go before the jury. In distinguishing the above case from that of *Jones* v. *E. Hulton & Co.* [1909] 2 K.B. 444, C.A., affirmed by the House of Lords, *sub nom.*, *E. Hulton & Co.* v. *Jones* [1910] A.C. 20; 54 SOL. J. 116; Mr. Justice TALBOT pointed out that in the latter case the alleged defamatory statements were not true at all, and there was no suggestion that any person of the name of "ARTEMUS JONES" had really done what was stated; but in the present case the statement was perfectly true, for a person named HAROLD COOPER had made a public statement, which he had a perfect right to do, in a form in which it might be taken (owing to the omission of any address) to come from any other man of the same name. "If a newspaper," said the learned judge, "reported truly that a named person has been

convicted of a crime without further identifying him by an address, has everyone of the same name a right of action? To hold that in such circumstances there is a right of action would be an extension of the principle of *Jones* v. *Hulton, supra*, for which there is no authority and would be unwarrantable." In the above connexion we must necessarily refer to the facts of *Jones* v. *E. Hulton & Co., supra*, which has been responsible for the launching of so many actions of this nature. There, the appellants, the owners and publishers of a newspaper, published in an article defamatory statements of a named person believed by the author of the article and the editor of the paper to be a fictitious personage with an unusual name. The article, which was a piece of fictitious gossip, was written throughout in a tone of pronounced and extravagant levity, and spoke about a person named ARTEMUS JONES behaving in a disreputable manner at a foreign resort. The name, i.e., "ARTEMUS JONES," was that of the plaintiff, who was unknown to the author and the editor. There was no intention on the part of anyone to defame the plaintiff, but evidence was given by the plaintiff's friends that they thought the article referred to him. The Court of Appeal, whose decision was affirmed by the House of Lords, held that the plaintiff was entitled to maintain the action. In our submission there is a clear distinction between the cases of *Jones* v. *E. Hulton & Co., supra*, and *Cooper and Wife* v. *Hirst, Kidd & Rennie, Ltd., supra*, which Mr. Justice TALBOT was fully justified in drawing. In the "ARTEMUS JONES" case the words complained of were clearly capable of conveying a defamatory meaning and were found in fact to be defamatory; in the recent case the advertisement was not in law reasonably capable of bearing a defamatory meaning. In the "ARTEMUS JONES" case there was an allegation that the libel was written "of and concerning the plaintiff," and the jury found, as a fact, that the words complained of did refer to the plaintiff, whereas, in the recent case, there does not appear to have been any such averment, and, therefore, no question to be left to the jury.

The Bar Council's Annual Statement.

UNDOUBTEDLY the most important matter raised in the annual statement for 1931 of the Bar Council is the cost of litigation, the report of the Special Committee of the Council appointed to consider it being printed as a separate annexe. On that report, however, together with those of The Law Society and the London Chamber of Commerce, we have already made comment (see 75 SOL. J., pp. 433 and 471). As recorded by the statement, the problem still remains under consideration in all quarters, and a solution of it which is fair to both branches of the profession and their clients is urgently needed.

A question which concerns both branches in their mutual relationship is also mentioned, namely, the due payment of counsel's fees, The Law Society desiring to add an explanatory paragraph as to their attitude in the matter, as recorded in last year's statement. Barristers and their clerks are, no doubt, well aware by this time that, if they can prove that their professional client has received money to pay their fees from the lay client, and has failed to pay it over, such failure is regarded as professional misconduct and punishable accordingly. As an addendum, however, the Council now state that, taking the view that solicitors are personally liable for the fees of counsel whom they brief or instruct, whether recouped by their lay clients or otherwise, they are prepared to consider the complaint of any barrister whose fees are in arrear, and who has been unable after reasonable efforts to obtain payment. In fact, if a solicitor assured a barrister's clerk that the lay client had not yet paid his bill, it would be highly unusual for the clerk to press for immediate payment, though the hypothetical liability (hypothetical, because not legally enforceable) would, no doubt, be as stated by The Law Society's Council. The new practice suggested, however, may have its uses. A barrister has, as above mentioned, his theoretical remedy if a solicitor has been paid by his lay client, and then retains counsel's money for himself. Actually, if a solicitor denies having received payment from his lay client, it is almost impossible for the barrister to verify the truth of his statement. As a last resort, his clerk may write direct to the lay client, but the latter is, of course, under no obligation to answer. An inquiry put to a barrister's clerk of fifty years' experience, who during the latter portion of his work has been collecting probably from fifteen to twenty thousand a year for one K.C. and several juniors, has elicited the information that in one case only he possessed the certain knowledge that a solicitor had been paid a barrister's fee and retained it. It may be regarded as just as important for solicitors as for barristers that their branch of the profession should be purged of men capable of such dishonesty, and The Law Society can probably ascertain the facts much better than a barrister or his clerk. Payment of a barrister's fees if a lay client defaults may perhaps be regarded more as a matter of professional honour than criminal dishonesty, and the average barrister would hardly be likely to trouble The Law Society unless he had suspicion, almost amounting to certainty, that his fee had in fact been paid by the lay client and retained by the solicitor.

One curious little incident mentioned in the statement is the conviction of a man who obtained money on the false pretence that he was a barrister. Solicitors have direct statutory protection against impostors, for example, in the Solicitors Act, 1860, s. 26, and that of 1874, s. 12. The offence of pretending to be a solicitor is, of course, a far more common one, and barristers hardly need such protection. The offender's victim must presumably have been a person ignorant of the functions of a barrister's clerk, or of the "Law List."

On another matter, the Council expressed the opinion that barristers should not write articles for or give interviews to newspaper representatives with regard to pending cases, nor in cases where the time for appeal has not expired. The view may here be respectfully expressed that a barrister, in respect of cases under appeal, should not have less freedom of comment than a layman, as laid down in *Dunn* v. *Bevan* [1922] 1 Ch. 276, and the cases there cited (see 75 SOL. J. 179). Criticism of the law laid down by a judge, if properly made, should surely be allowable at any time, and it is not likely that the judges in the Court of Appeal would be unduly influenced if they read it. A barrister's criticism is informed criticism, and our own contributors have on occasion made successful prophecies that the law laid down by a judge of first instance would be disapproved in the Court of Appeal.

The Bar Council has ruled that barristers may take instructions in non-contentious matters from American lawyers direct without the intervention of an English solicitor. This perhaps may be regarded as a matter of courtesy, and the occasions for such a practice would no doubt be rare. Presumably a barrister can take instructions direct from any lawyer in any British Dominion or Colony, though the usual practice is to do so through a London, or at least an English agent.

The statement records the experiment of a microphone in the courts. The reports of its use were favourable, but the need for economy has postponed the innovation. [Our comment on a similar experiment tried in Manchester appears *ante* p. 35.

The usual decisions on matters of professional etiquette also appear, together with the stereotype notice as to the settlement of disputes between members of the two branches of the profession.

Free State Court Costs.

[CONTRIBUTED.]

THE case of *White* v. *Stokes and Quirke* in the High Court of the Irish Free State has led to some curious revelations, which, it is understood, will shortly have the attention of both The Law Society and the Bar in this dominion. The defendants are auctioneers and estate agents in Clonmel and were sued for alleged trespass and wrongful seizure of chattels by the sub-sheriff on lands situated in Tipperary.

Mr. Justice O'BYRNE gave plaintiff judgment for £85 "and such costs as a judgment for that amount would carry in the Circuit Court."

A bill of costs for £168 was drawn by plaintiff's solicitor, and the Taxing Master reduced it to £128. Defendants objected to this on the ground that the Taxing Master has acted on an erroneous principle.

When the matter came before the President of the High Court on 14th March, 1930, he made an order directing that the bill of costs be returned to the Taxing Master "to tax the reasonable costs to be allowed, as if the sum of £85 had been recovered by the plaintiff in the Circuit Court." The Taxing Master, having again gone carefully over the costs as taxed, reported that he was of opinion "that the amount allowed was reasonable as if the said action had been heard in the Circuit Court."

The defendants having again objected to the costs allowed, the Taxing Master reported that inquiries showed him that costs were not taxed in the Circuit Court, but were fixed or measured by the judge.

Ultimately the case came before the Supreme Court by way of appeal by the plaintiff from the decision of the President.

The Chief Justice, delivering judgment, explained that the difficulty with regard to the taxation of the costs had been caused by the lack of Circuit Court rules. Although the Circuit Court had been seven years in existence, the statutory provision for the making of rules had never been carried into effect.

The failure to do so had hindered the development of the court; and the fact that the court had not wholly broken down was to be attributed to the devotion of the judges and the officials.

His Lordship also pointed out the Courts of Justice of the Saorstat are not the old courts of the British regime, amended, extended, or otherwise altered; but are new courts established under the Constitution.

The courts of the former system, he said, were brought to an end by divesting them of their jurisdiction and transferring it, so far as it had any existence, to the new courts, which were, however, already clothed with jurisdiction, power and authority by the Constitution.

The old County Court, he added, had statutory jurisdiction as to costs with regard to equity and common law. At the date of the transferred jurisdiction there was a scale of costs in force; and under the Courts of Justice Act, the opinion of his lordship was that the scale was carried over, to remain operative as a Circuit Court scale, for some purposes at any rate, until it should be superseded.

"That scale is actually in force and operative in the Circuit Court; and until rules are made it is the only scale of costs which the Circuit Court has jurisdiction to apply."

The appeal was dismissed with costs, the order of the Taxing Master being varied, directing him to have regard to the former scale of costs in the old County Courts, provided for in 14 and 15 Vic., c. 56, s. 79.

In commenting on this decision, the *Irish Independent*, in a leading article states: "That the Supreme Court could have come to no other decision than that delivered yesterday is beyond question. But it creates an extraordinary position. It would appear that every Circuit judgment carrying costs beyond the limits permitted by the old County Court scale has been invalid, and likewise that every execution levied by a sub-sheriff on foot of such a judgment has been an illegal seizure. The Supreme Court was not, for the purpose of yesterday's decision, called upon to touch on the question of costs in Circuit cases outside the jurisdiction formerly vested in the County Courts, but it is certainly open to inference from the judgment that in these cases the Circuit Court has no jurisdiction to award any costs whatever, and that where it has done so—that is in every such case—it has given an irregular judgment.

We presume that both the solicitors and the barristers will take immediate action to protect their particular interests in this matter . . . ."

The Licensing Commission Report.

ONE of the difficulties about securing reforms of our multifarious liquor laws is that drink, like religion, is a highly controversial topic. That is no doubt why there are three minority reports incorporated in the report of the Royal Commission on Licensing in England and Wales. The minority reports respectively recommend a national referendum, complete public ownership of the trade, and no extension of public ownership, all matters offering scope for debate. At any rate, it is something to be thankful for that there is a majority report. The striking decrease in the consumption of beer from approximately 32 gallons per head in 1899 to 16 gallons in 1929 and of spirits from 0·97 gallons per head to 0·25 gallons in 1929 is attributed by the Commissioners to the growth of counter attractions such as cinemas, wireless and playing fields, to better housing and education and to short broken hours. Presumably, out of courtesy to the trade, the Commission says nothing about the modern quality and strength of the beer as a contributory factor, but perhaps that is so universally accepted that it need not be expressly stated. The decrease in drunkenness, from whatever cause, is a matter on which as a country we can congratulate ourselves. That it is a fact can be testified by all police court practitioners of experience, who know how infrequent prosecutions for drunken and disorderly conduct are now as compared with pre-war days. The Commission has also produced a comprehensive seven years' plan for the ultimate extinction of superfluous licences, and recommends the formation of a National Licensing Commission charged, *inter alia*, with the duties of regrouping licensing districts, the collection and publication of data, and the presentation to Parliament of an annual report. With regard to local option, the Commissioners do not favour its general adoption throughout England and Wales, but recommend a modified form for newly developed areas, delimited as special areas by the proposed National Licensing Commission. Everyone will agree with the general desirability for further improvements in the public house system, but whether that is synonymous with the abolition of "perpendicular drinking" at the bar, so dear to the English mind, is doubtful. There will likewise be no substantial disagreement on the desirability of instituting standard drinking hours. The report also discriminates in favour of the hotel and catering industry in order that the industry should not be cramped and that its status and standard should be raised. With these objects in view it proposes that special licences should be granted to hotels, permitting the sale of intoxicants with meals until midnight in the Metropolis and until 11 p.m. in the provinces, the meal to be a "substantial refreshment" and not a mere pretence. The notorious "sandwich" meal, which is often asked for in purported compliance with ss. 3 and 5 of the Licensing Act, 1921 (11 and 12 Geo. 5, c. 42), would thus be abolished. The Commission evidently does not deem it to be a sufficient safeguard against the pretence of a meal that the licensing justices must be satisfied, under s. 3 (2) of that Act, that the premises "are

structurally adapted and *bona fide* used or intended to be used for the purpose of habitually providing, for the accommodation of persons frequenting the premises, substantial refreshment, to which the sale and supply of intoxicating liquor is auxiliary." The majority report is also in favour of the limitation of the tied house system, and of the extension of public ownership which has proved so successful in Carlisle. An estimate of the amount of money spent annually in advertising intoxicants is stated to be in the region of £2,000,000. Many of the advertisements, it is stated, contain "palpable scientific untruths." Truth is reputed in legend to reside at the bottom of a well, but it will out, even in the report of a Royal Commission, and apparently even where the well does not contain water.

Company Law and Practice.

CXII.

INSPECTION.—III.

LAST week I was dealing with the reports of Board of Trade inspectors, with particular reference to the methods which are open to the inspectors for obtaining information on which to form their opinions and base their reports; this week it may be well to see what happens when such a report has actually been made; s. 136 is the section which deals with this, and for this purpose I think I can properly confine myself to England, without overburdening this column with the position so far as Scotland is concerned.

If from such a report as I have been referring to it appears to the Board of Trade that any person has been guilty of any offence, in relation to the company with respect to the affairs of which the investigation has been made, for which he is criminally liable, the Board must, if it appears to the Board to be a case for a prosecution by the Director of Public Prosecutions, refer the matter to him (s. 136 (1)). It does not follow, however, that, if there is a reference by the Board of Trade to the Director of Public Prosecutions, a prosecution will follow, because the discretion of the Board of Trade is succeeded by the discretion of the Director of Public Prosecutions; when a matter has been referred to this latter functionary by the Board of Trade, he must then decide (*a*) whether he considers that the case is one in which a prosecution ought to be instituted, and (*b*) whether he considers that it is desirable in the public interest that the proceedings in the prosecution should be conducted by him. If he reaches satisfactory conclusions on both these two points, the Director of Public Prosecutions must institute proceedings; and it is the duty in such case of all officers and agents of the company past and present (including the bankers, solicitors and auditors of the company, but excluding the defendant himself) to give him all assistance in connexion with the prosecution which they are reasonably able to give (s. 136 (2)).

These prosecutions may seem to some of my readers to be matters which do not strictly concern the company lawyer so much as the criminal lawyer, but it is nevertheless necessary to have them present to one's mind when considering these investigations, because the costs of the investigation, or rather the source from which they have to be paid, depends upon whether or not a prosecution is instituted by the Director of Public Prosecutions. If a prosecution is so instituted, the costs are to be defrayed by the Board of Trade; which seems, to one taxpayer, at any rate, to be a provision which might be modified in favour of the public. There would seem to be no reason why the court in which the person is prosecuted should not have a discretionary power, in the event of the person being found guilty, of ordering him to pay the whole or some part of the costs of the investigation; and, in any event, why should the State have to bear the costs in priority to the company? In the great majority of cases the investigation has been rendered necessary by reason of the acts or defaults of some officer of the company; and the employer of the guilty person, rather than the State, ought, it is submitted, to bear the costs of any investigation requisite for seeking out the guilt.

If a prosecution is not instituted by the Director of Public Prosecutions, the company must pay the costs, unless the Board directs that they shall be paid by the applicants, or partly by the company and partly by the applicants. If, and to the extent to which, the company does not pay the costs payable by it, the applicants must make up the deficiency up to the amount by which the security given by them exceeds the amount the Board of Trade have directed them to pay, and any balance must be paid by the Board of Trade (s. 136 (3)). The provisions for payment of the costs where such a prosecution is not instituted strengthen the views expressed above that the company should be resorted to for the costs before the Board is asked to contribute, where such a prosecution is instituted.

Section 137 provides that a company may by special resolution appoint inspectors to investigate its affairs, and that inspectors so appointed shall have the same powers and duties as Board of Trade inspectors, except that they must report in such manner and to such persons as the company in general meeting may direct. Does this preclude a company from, say, appointing a committee by ordinary resolution to investigate its affairs? It does not do so; but, on the other hand, a committee appointed by ordinary resolution will not be able to do anything which can have much value, because its powers will be so limited; it is possible, though this will depend on the articles, that such a committee, unless empowered by special resolution, could not inspect the books and documents of the company, and it could not make a general examination of the company's servants. Further, when a company has (as companies almost invariably do) delegated by the articles the management of its affairs to the directors, it cannot in general meeting by ordinary resolution (unless authorised in that behalf by the articles) interfere with such management; see *Salmon* v. *Quin & Axtens* [1909] A.C. 442; and this doctrine is one which limits the powers of any committee appointed to purely advisory ones.

(*To be continued.*)

A Conveyancer's Diary.

The Validity of non-Charitable Trusts for the Upkeep of Tomb or Monument.

A recent case which is well worth consideration as involving several points of interest is *Re Hooper*, *Parker* v. *Ward* [1931] W.N. 88.

A testator by his will dated in 1927 appointed executors and trustees and made a bequest in the following terms: "I give and bequeath unto my trustees out of pure personalty the sum of one thousand pounds upon trust that they will invest the same and to the intent that so far as they legally can do so and in any manner that they may in their discretion arrange they will out of the annual income thereof provide, for so long as may be practicable, for the care and upkeep of the grave and monument in the Torquay Cemetery of my dear father and mother and of the vault and monument there in which lie the remains of my said dear wife and two daughters, also the grave and monument in Shotley Churchyard near Ipswich where my gallant and only son lies buried and of the tablet in St. Mathias Church at Ilsham aforesaid to the memories of my said wife and children and the window in the same church to the memory of my late father." The testator proceeded to provide that the trustees might apply capital as well as income for the purposes mentioned and bequeathed any surplus of capital or accumulated income to the vicar and churchwardens of St. Mathias Church at Ilsham for such purposes as they in their uncontrolled discretion should think fit.

There are at least three questions which arise in considering the validity of a gift of this kind.

The first question is whether a trust is valid which is not in favour of some person or persons who can enforce it and is not charitable so as to be enforceable at the instance of the Attorney-General.

The second question is whether such a trust is not invalid as infringing the rule against perpetuities.

The third question is whether such expressions as "so far as they legally can do so" will suffice to render valid trusts which would otherwise offend against the perpetuity rule.

Before dealing with these three questions it may be best to state what the decision of Maugham, J., was in the case under consideration.

His Lordship said (I quote from the *Weekly Notes* report) that "the point was of considerable doubt which he would have had great difficulty in deciding but for *Pirbright* v. *Salwey* [1896] W.N. 86." After referring to the facts in that case and the decision of Stirling, J., his Lordship said that "The case did not appear to have attracted very much the attention of text-book writers, but as it had not, so far as he (his Lordship) could see, been commented upon adversely, he was disposed to follow it." His Lordship added that the conclusion at which he had arrived was, following *Pirbright* v. *Salwey*, "that the trust in the present case was valid for a period of twenty-one years from the testator's death so far as concerned the upkeep of the graves, vaults and monuments in the cemetery and the churchyard. So far as concerned the tablet and the window in the church, there was no question but that the gift was a good charitable gift, and therefore the rule against perpetuities did not apply."

Now to return to the three questions which I have said arise.

In the first place, I may say that those questions only arise with regard to the non-charitable trusts—so far as the trusts were charitable their validity could not be impeached.

Taking, then, the non-charitable trusts, the first question is whether such trusts are valid where there is no person who is entitled or interested to enforce them.

Reading the judgment of Maugham, J., in *Re Hooper*, I cannot say whether that point was in his Lordship's mind or not. The arguments of counsel are not set out in the report, and I gather that the learned judge took it for granted that, except for the rule against perpetuities, the trusts would be valid. At any rate the question which I am now dealing with was not directly (nor as I think indirectly) referred to, and so we must look to some of the earlier authorities to see what the answer to the question is.

Before dealing with the cases on this point, I may mention with reference to the observation of the learned judge that the decision in *Pirbright* v. *Salwey* had not "been commented upon adversely," that in "Jarman on Wills," 7th Ed., I, p. 249, note (*n*), the learned editor remarks with regard to that case and *Re Dean* (to which I will refer presently) that the doctrine there laid down is "anomalous and not easy to explain." It seems that the attention of Maugham, J., was not called to that adverse comment.

Now for the authorities on this first question.

In *Pettigall* v. *Pettigall* (1842), 11 L.J. Ch. 176, there was a bequest of £50 a year to an executor to be applied for the keep of a mare. The report states that it was "admitted that a bequest in favour of an animal was valid," and the only question was who was entitled to the surplus not required for that purpose. It was held that the executor was entitled to the £50 during the lifetime of the mare he undertaking to "maintain her comfortably," the surplus of course being retained by the executor.

Mitford v. *Reynolds* (1848), 16 Sim. 105, was a curious case where the court had to consider what Shadwell, V.C., described as a "fantastical will." So far as material for the present purpose it may be said that the testator directed his executors to purchase a certain piece of land for erection of a monument and interment of his own body and the bodies of relatives. He gave the remainder of his property to a charity subject to a trust for the upkeep of his horses. The direction for purchase of the land for the monument becoming ineffective by reason of the owner refusing to sell the estate passed to the charity, and the order made provision for the keep of the horses.

In *Gott* v. *Nairne* (1876), 3 Ch.D. 278, a testator bequeathed £12,000 to trustees, who were directed to purchase therewith an advowson and until his son should be presented to a benefice producing a net £1,000 a year or die, the trustees were to present some fit person to the benefice, the advowson whereof they had purchased, and subject as aforesaid were to hold the advowson in trust for the son, his heirs and assigns. In the meantime, until the purchase of the advowson, the trustees were to invest the £12,000 and accumulate the income for twenty-one years from the testator's death, and after the expiration of that period (if the advowson had not been purchased) the £12,000 and accumulations of income were to belong to the son. The £12,000 having been set aside and the income accumulated, no advowson having been purchased, the son, thirteen years after the death of the testator, claimed the whole fund. It was held that although there was no person who could enforce the trust, yet if the trustees were willing to carry it out and purchase an advowson, and present a fit and proper person to the benefice, the son was not entitled to a transfer of the fund.

I do not see that any of these cases can be taken as convincing authorities that (apart from the perpetuity question) there may be a valid trust in favour of lower animals or of inanimate objects, there being no person to enforce such trusts.

In *Pettigall* v. *Pettigall*, the decision was in effect that the executor was entitled to an annuity upon condition that he maintained the mare. There is no suggestion that the condition was illegal, and, subject to his observing the condition, the executor was entitled to the whole of the annuity so long as the mare lived.

In *Mitford* v. *Reynolds*, the order made provision for the care of the horses, apparently by consent.

The point which I am discussing was not argued in either case, and perhaps did not arise.

Lastly, in *Gott* v. *Nairne*, the application was made during the accumulation period at any time before the end of which the trustees might have purchased an advowson and presented to the benefice. There was at any rate potentially some person interested to enforce the trust. The case is, however, clearly distinguishable from one where the objects are inanimate or lower animals.

I am afraid that I must leave *Re Dean* and *Pirbright* v. *Salwey* until next week. Those are the authorities upon which, as it seems to me, the decision in *Re Hooper* can be justified if at all.

The perpetuity point must also be deferred to next week's Diary.

Landlord and Tenant Notebook.

The Right to sub-Let.

Certain members of the University of Liverpool, who had been engaged in investigating housing conditions in that city, have recently published a report in which they express the opinion that conditions will not improve as long as landlords derive advantage from sub-letting. Presumably, the advantage in the cases under consideration consists of additional security for rent. With the sociological aspects of the matter this Journal is not concerned; but a short review of the legal position, which is not so free from complications as at first appears, may be useful.

It is, of course, well known that *primâ facie* a tenant has a right to sub-let. It is equally well known that most lessors try to retain some measure of control over their property by means of a covenant against alienation. Generally speaking, courts of law and equity have tended to interpret these covenants in favour of tenants; and Parliament, too, has frowned upon interference with the lessee's right to dispose of his interest.

Thus, the word "sub-let" itself has always been strictly construed, and if it could be said that the facts showed something short of the grant of an estate there was no breach of the covenant. A modern illustration—though not strictly relating to alleged sub-letting—is afforded by *Chaplin* v. *Smith* [1926] 1 K.B. 198, C.A., in which the tenant had "turned himself into a limited company," the company having the "use" of the premises in return for an indemnity as to rent and rates. The part of the covenant alleged to be broken was that which forbade "parting with possession," but the court held, that as the tenant still used the premises himself, there had been no breach. Landlords who wish to restrict their tenants as much as possible in this respect, without actually compelling them to occupy the premises (as in the case of licensed premises), would be well advised to adopt the form of covenant discussed in *Jackson* v. *Simons* [1923] 1 Ch. 373.

Then there is the rule of construction laid down in *Church* v. *Brown* (1808), 15 Ves. 258, by which a covenant not to sub-let, *simpliciter*, does not preclude the covenantor from sub-letting part. It does, however, prevent the tenant from sub-letting the whole of the premises piecemeal, for, as was held in *Chatterton* v. *Terrell* [1923] A.C. 578, in such a case the final sub-demise constitutes a breach.

The question of consent has been the subject-matter of much litigation and of some legislation. The L.T.A., 1927, s. 19 (1), has provided that a covenant against alienation qualified by provision for consent shall in all cases be deemed to be further qualified by a proviso that consent is not to be unreasonably withheld. Whether this enactment has led to the use of absolute covenants (which could always be modified by agreement during the currency of the lease) it is too early to say.

But, quite apart from those decisions which illustrate what a landlord may reasonably take into consideration in granting or refusing consent, one or two cases worth noting show that the courts have consistently opposed interference with the tenant's freedom of disposal. Thus, while effect has reluctantly been given to a stipulation that consent should be in writing, it was said in *Richardson* v. *Evans* (1818), 3 Madd. 218, that equitable relief would be given if a parol licence were used "as a snare, and under circumstances which amounted to fraud." And consent has been dispensed with when (owing to pure forgetfulness) the landlords neglected to answer the application: *Lewis & Allenby Ltd.* v. *Pegge* [1914] 1 Ch. 782; the stipulation was, however, qualified in that case by a provision that consent should not be withheld in the case of a respectable and responsible person, and it was admitted that the sub-tenant answered to that description.

As to what a landlord may reasonably object to, guidance is fortunately available in concise form. The judgment delivered by Warrington, L.J., in *Houlder Bros. & Co.* v. *Gibbs* [1925] Ch. 575, C.A., should provide the practitioner with material on which to base advice called for. Briefly (p. 585), the objection must relate either to the personality of the candidate or the use to which he is likely to put the property; it is important to observe that proof of respectability and responsibility do not necessarily disarm the lessor. But anything in the nature of bargaining will be fatal to the landlord, if it would give him more than he is entitled to; the Conveyancing Act, 1892, s. 3 (now L.P.A., 1925, s. 144; and see L.T.A., 1927, s. 19 (1) (*a*)), put it out of the lessor's power to make the covenant a source of profit.

If consent be unreasonably withheld, there are two things the tenant may do. He can proceed, dispensing with consent: *Treloar* v. *Bigge* (1874), 43 L.J. Ex. 95; or he may sue for a declaration: *Mills* v. *Cannon Brewery, Ltd.* [1920] 2 Ch. 38.

It is perhaps important to note that all decisions referred to above relate to events which took place before 1926. It is possible that the "pro-tenant" interpretations placed upon covenants and statutes are causally connected with the circumstance that the covenant against alienation was not one in respect of which relief could be given against forfeiture. Equity had always refused to relieve, and the old Conveyancing Act, 1881, s. 14 (6) (i), included the covenant among the exceptions; but L.P.A., 1925, omitted it (see s. 146 (8) (i)), and it has been suggested that the result may be some modification of the principles hitherto applied.

A tenant of premises within the Rent, etc., Restriction Acts is liable to be ejected if he sub-lets the whole of the premises without obtaining the consent of his landlord. This was enacted by s. 4 (1) (*b*) of the 1923 Act; but recent decisions show that the clause was superfluous, because a tenant not occupying the premises loses the protection automatically.

Our County Court Letter.

THE RESPONSIBILITIES OF COMEDIANS.

THE pantomime season lends interest to the recent case of *Martin* v. *Lester*, at Bournemouth County Court, in which the claim was for £20, being a bonus in lieu of a benefit performance, and £8 in respect of a week's wages in lieu of notice—the latter amount having been paid into court. The plaintiff's case was that (1) he had had a successful tour with the defendant in 1930 (as a comedian and dancer) and was promoted to stage manager for the 1931 season at Boscombe Pier, (2) by reason of the plaintiff's success with the audiences, the defendant became jealous, and objected to the length of time during which the plaintiff occupied the stage, (3) the plaintiff was therefore dismissed before the end of the season, without a benefit, although the latter was an implied term of the engagement. The defendant denied any agreement to provide a benefit, and contended that he was justified in dismissing the plaintiff, who had thus forfeited any right to benefit. The defendant's evidence was that he objected to the plaintiff's conduct, e.g., pointing to members of the audience during his patter, and quarrelling with the baritone in the dressing-room. His Honour Judge Hyslop Maxwell held, however, that the plaintiff's dismissal was unwarranted (even if he sometimes gave too many encores) and judgment was therefore given for the amount claimed, with costs.

THE QUALIFICATIONS FOR WORKMEN'S COMPENSATION.

THE categories of possible claimants have been considered in three recent cases.

(*a*) AIR PILOTS.

In *Smith* v. *Surrey Flying Services*, at Croydon County Court, the widow of a pilot claimed that his death had occurred out of and in the course of his employment, as the deceased had helped mechanics to clean and repair machines. The respondents denied that such work was any part of his duty, as the deceased had been employed for eight years solely to fly aeroplanes. Moreover, the deceased had been killed in a privately-owned machine, which he had no authority to fly without the respondents' permission, although the owner had been on board and was also killed. His Honour Judge Harington held that flying aeroplanes was not manual labour, and that any assistance to the ground staff had been purely voluntary on the part of the deceased, who was not employed for that purpose. Judgment was therefore given for the respondents, with costs.

(*b*) Temporary Postmen.

In *Race* v. *The Postmaster-General*, at Driffield County Court, the claim was for an award of £354 9s. in respect of the death of the applicant's husband, who had been deputising as a postman for his father, during the latter's holiday. The deceased had been riding a motor cycle on his round, and had been killed by a train at a level crossing, the applicant's case being that he had written permission to ride a bicycle. The respondent denied any knowledge, however, of the use of a motor cycle, and contended that the deceased had thereby voluntarily superinduced a peril to which he was neither required nor authorised to expose himself. His Honour Judge Beazley held (in a reserved judgment) that written permission to use a bicycle did not cover the use of a motor cycle, and no award was therefore made. By consent each party paid their own costs.

(*c*) Seamen.

In *Baxter* v. *Humphrey and Sleight*, at Grimsby County Court, an award was claimed by the widow and family of a trawler hand, who had been drowned in an attempted rescue of the mate, who was washed overboard. The respondents' case was that the deceased had purposely exposed himself to a danger which formed no part of his duty, and therefore his death was not an accident within the Act. His Honour Judge Langman (having quoted Psalm 107, verse 23), held that the accident was not the dive into the sea (which was deliberate) but the death by drowning (which was unexpected), as the effort had a reasonable chance of success. An award was therefore made of £600 with costs. Compare the County Court Letter entitled "Shipwrecked Seamen's Right to Wages" in our issue of the 8th June, 1929 (73 Sol. J. 362), and *Maver* v. "*Solon*" (*Owners*) (1929), W.C. and I.R. 365.

Correspondence.

"Little Brother."

Sir,—In a recent issue of your paper I read a report of a speech by His Honour Judge Owen Thompson, K.C., in which he expressed his regret at the fact that the High Court Judges did not refer to County Court Judges as "brothers," but always mentioned them by name.

I would like to call the attention of your readers to a poem on the case of *Leake* v. *Driffield* (1889), in the 1896 edition of "Lyrics of Lincoln's Inn," published by Messrs. Sweet and Maxwell, Limited, in which the following lines occur:—

"Said the Judges, 'It afflicts us with unutterable woe
To reverse our little brother in the County Court below';"

The Judges in question were Mr. Justice Mathew and Mr. Justice Wills, sitting in the Divisional Court.

London, W.C.2. E. Maitland Woolf.
12th January.

Reviews.

The Landlord and Tenant Act, 1927. With Notes on the sections, the Text of the Act, and Appendices, Forms, Rules and Cases. By S. P. J. Merlin, Barrister-at-Law. 1931. Second Edition. Demy 8vo. pp. xxii and (with Index) 227. London: Waterlow & Sons, Limited. 10s. net.

The Landlord and Tenant Act, 1927, would not be an Act of the British Parliament, did it fail to provide us with many a legal problem. Some have already been solved by the High Court; one, indeed, by the House of Lords. Others yet await solution. And it was at a most opportune time that there appeared the second edition of Mr. S. P. J. Merlin's work upon the Act. His first edition, published before the Act came into operation, was admirable. The new edition is even more so, and may well be recommended as indispensable alike to the practitioner and to all landlords and tenants desirous of "knowing where they stand." The "lay-out" is a model of lucidity. The amount of new material is extensive, and yet none of it appears to be superfluous. Every decision of importance down to July last seems to be included; and indeed the local press of the country seems to have been ransacked for County Court decisions on points where as yet no High Court decision existed.

The author even anticipated (though it is true that he doubted) the possibility of a Divisional Court deciding, as it has now done in *Smith* v. *Metropolitan Properties Co. Ltd*, 75 Sol. J. 813, that no proceedings for compensation for goodwill can be commenced until after the tenancy has terminated; a decision which has come as a shock to many.

Not the least valuable part of the work deals with "*Goodwill*," which the Act left undefined, and with the true basis of the monetary compensation therefor; the latter being a particularly vital problem and one which is of equal importance, whether a claim be made for compensation under s. 4 of the Act or for a new lease under s. 5.

The vexed words "*in lieu of*" in s. 5 (1) find thoughtful consideration, and the author awaits in their regard a decision of the High Court. It is to be feared, however, that he will await any such in vain. For nothing short of amending legislation seems capable of getting rid of those plain words, made yet the plainer—if need so be—by the very wording of s. 5 (2) and s. 5 (3) (*b*).

For tenants desirous of making "*improvements*," for which compensation may be claimable at the close of their tenancy, the work is full of help.

Licensees now, for the first time, find themselves able to read the exhaustive report of the late Sir Willes Chitty, Bart., K.C., in the well-known case of *Kruze* v. *Benskins Brewery, Ltd.* (1930), 74 Sol. J. 379, which, together with a large part of the judgment of His Honour Judge Crawford therein, is in the "Appendix of Cases." To one and all of them this should be a boon.

The Statutory Rules and Orders appear in their latest amended form; and the author does well to insist on the urgent need that all concerned should study "the prescribed manner" and the due times for the making of claims, etc., and to give warning of the fate attendant upon errors in such regards.

Though it is to be doubted whether the position of a weekly tenant as to compensation for goodwill has not been put too high on p. 25—and though there is an obvious misprint of "tenant" for "landlord" on p. 9, in the passage cited from *Hudd* v. *Matthews* [1930] 2 K.B. 197—and though one could have wished for guidance on s. 25 (2), and especially so, having regard to the somewhat similar words in the Agricultural Holdings Acts, 1908, s. 48 (2), and 1923, s. 57 (2), and to the cases of *Dale* v. *Hatfield Chase Corporation* [1922] 2 K.B. 282, and *Richards* v. *Pryce* [1927] 2 K.B. 76—and though the referees appointed under the Act might have desired some interpretative notes as to the true intent of Ord. 50B, r. 31—there can yet be no doubt whatever that this new edition of Mr. Merlin's work will prove invaluable, not only to all for whose benefit the Act was passed, but also to landlords themselves as showing them how to resist unjustifiable claims, and further—and by no means least—to all who have to advise upon and to all who are concerned in the administration of an Act, which has introduced such novel principles into the law of England as has "The Landlord and Tenant Act, 1927."

Some Memories. By G. Washington Fox. 1931. Crown 8vo. pp. (with Index) 152. London: Thomas Murby & Co. 3s. 6d. net.

This little book of reminiscences by a Kingston solicitor will, of course, prove mainly of local interest, dealing as it

does with men and things principally in relation to Kingston and the Kingston Debating Society. The briefer second part is devoted to legal memories of a somewhat wider nature. Chapter 10 on speech-making notes several useful points.

The Court-Martial of the "Bounty" Mutineers. By OWEN RUTTER, F.R.G.S. 1931. Demy 8vo. pp. xi and 202. Edinburgh and London: William Hodge & Co. Limited. 10s. 6d. net.

This latest addition to the "Notable British Trials" series departs from the tradition of its predecessors in going outside the field of criminal law proper to examine proceedings by court-martial. The usual skilful blend of human interest and legal is consequently unattainable where the latter is necessarily attenuated and the former predominates. Nevertheless, the profession should not pass this work by, for it comes from capable hands, and the analysis of evidence, which is a feature of this series, is as careful and complete as ever, dealing separately with the case against each of the prisoners in this extraordinary affair.

Books Received.

Civil Procedure for Examinees. By R. W. FARRIN, Barrister-at-Law. 1931. Demy 8vo. pp. 68. London: Sweet and Maxwell, Ltd. 3s. 6d. net.

Evidence for Examinees. By R. W. FARRIN, Barrister-at-Law. 1931. Demy 8vo. pp. 67. London: Sweet & Maxwell, Ltd. 3s. 6d. net.

A Compendium of Precedents on Education Acts. Fourth edition. 1931. By A. E. IKIN, B.Sc., LL.D., and H. C. SPARKE, Barrister-at-Law. Demy 8vo. pp. (with Index) 765. London: School Government Publishing Co., Ltd. 45s. net.

Daniel's Law of Distress. Sixth edition. 1932. By SYDNEY E. POCOCK, LL.B. (Lond.), Barrister-at-Law. Crown 8vo. pp. xxxvi and (with Index) 272. London: The Estates Gazette, Ltd.; Sweet & Maxwell, Ltd. 9s. 6d. net.

Indermaur's Common Law. Third edition. 1932. By A. M. WILSHERE, M.A., LL.B., Barrister-at-Law. Demy 8vo. pp. lxvi and (with Index) 847. London: Sweet & Maxwell, Ltd. 30s. net.

The Law of Master and Servant. By A. S. DIAMOND, M.A., LL.M., Barrister-at-Law. 1932. Demy 8vo. pp. lxvi and (with Index) 348. London: Stevens & Sons, Ltd. 12s. 6d. net.

Voluntary Liquidation under the Companies Act, 1929. By HERBERT W. JORDAN and R. J. BLACKADDER, C.A. 1931. Royal 8vo. pp. xxiv and (with Index) 226. London: Jordan & Sons, Ltd. 10s. net.

Digest of the Law of Agency. Eighth Edition. 1932. By WILLIAM BOWSTEAD, Barrister-at-law. Demy 8vo. pp. 547 (with Index). London: Sweet & Maxwell, Limited. 27s. 6d. net.

Criminal Abortion. 1932. By L. A. PARRY, M.D., B.S., F.R.C.S. Demy 8vo. pp. 203 (with Index). London: John Bale, Sons and Danielsson Limited. 10s. 6d. net.

Bills of Costs. By JAMES E. THOMAS, LL.B., Barrister-at-Law, assisted by R. G. CLARK. 1932. Royal 8vo. pp. 747 (with Index). London: Stevens and Sons, Limited; Sweet and Maxwell, Limited. 42s. net.

Obituary.

MR. T. E. LIVINGSTONE OAKLEY.

We regret to announce the death of Mr. T. E. Livingstone Oakley, senior partner in the firm of Messrs. Le Brasseur and Oakley, of 40 Carey-street, Lincoln's Inn, W.C.2. Mr. Oakley was admitted a solicitor in 1881.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Nuper eram judex; nunc judicis ante tribunal
Subsistens paveo; judicor ipse modo.

So ended the self-composed epitaph of Sir David Williams, a Justice of the King's Bench, who died on the 22nd January, 1611. He was enormously wealthy and possessed considerable landed property. His will, executed only a week before his death, contained the following curious and rather amusing legacy: "And whereas it hath been heretofore agreed between my good and kind brother Warburton and myself that the survivor of us twayne should have the other's best scarlet robes, now I do will that my said good brother Warburton shall have the choice of either of my scarlet robes and he to take that shall best like him, praying him that as he hath been a good and kind brother unto me, so he will be a good and kind friend to my children." (Warburton, J., here mentioned was attached to the Court of Common Pleas.) To Lord Chancellor Ellesmere he left a large gilt cup in token of love and affection. Williams had been promoted to the Bench in 1604 at the time when James I decided to raise the strength of each of the superior courts from four to five judges.

JUDGE'S DOGS.

Everyone was sorry to hear of Mr. Justice Branson's loss in the death of his retriever, recently run over by a car. The dog was cut off before it could attain such judicial honours as Lord Brampton's terrier, Jack, or even Lord Erskine's Newfoundland, Toss. While at the Bar, Erskine would sometimes startle his clients during consultations by making the animal impersonate a judge. Careful training and the embellishments of a full bottomed wig and a pair of bands had produced quite an amusing caricature. As for Jack, he even had a little set of robes exactly like his master's. The sight of the two of them thus identically arrayed once gravely startled the high sheriff's chaplain at the opening of the Hereford Assizes. "My lord, are you really going to take the little dog to divine service in the cathedral?" he asked reprovingly. After pretending to consult his pet and listen to the answer, Hawkins, J., replied: "No, Jack says not to-day; he doesn't like long sermons." Lord Hermand, a Scottish judge, had a dog who went regularly to church with him and appeared to experience deep interest and spiritual relish. Another judicial dog belonged to Lord Chancellor Clare. It sat in court with him quite openly and sometimes received more of his attention than did counsel.

THE LITTLE MOUSE.

The recent report of the convict who was allowed to take a pet mouse with him when he left Camp Hill Prison seems to indicate that warders are rather more human than in Lord Brampton's time. The contrast is with that stern judge's "little mouse story" which incidentally showed a side of his character not always officially exhibited. A prisoner had tamed and befriended a little mouse which found its way into his cell till, one wretched day, a warder caught him feeding it, snatched it from his hand and killed it on the spot. Enraged beyond control, the man rushed with his dinner knife at the officious brute who just had time to escape through the door which received the blow. The defence to the consequent charge of attempted murder was that as, in the circumstances, murder was impossible, the charge must fail. Hawkins, J., dealing sympathetically with the matter, was delighted to direct an acquittal. It did not matter that the case he relied on was subsequently overruled.

A UNIVERSAL APPEAL.

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

POINTS IN PRACTICE

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Submission and Approval of Draft Conveyance—Whether a Memorandum in Writing of Agreement of Sale.

Q. 2380. A verbally agrees to sell a freehold house to B, and subsequently instructs his solicitors to prepare a draft contract. A's solicitors forward draft contract to B's solicitors with the following covering letter: "We have been instructed by our client A, in connexion with the sale of this property to your client B, and we accordingly enclose draft contract." B's solicitors return the draft contract without amendment or query, and on it they endorse a memorandum to the effect that they approve the contract on behalf of the purchaser. Does the draft contract, together with the covering letter and the memorandum endorsed on the contract by the purchaser's solicitors, constitute sufficient memorandum in writing within the meaning of the L.P.A., 1925, s. 40? There has been no statement either in writing or verbally that the sale is to be "subject to contract."

A. No. (See *Smith* v. *Webster* (1876) 3 Ch. D. 49, and *Bowen* v. *Duc d'Orleans* (1900) 16 T.L.R. 226.)

Limited Company—Purchase of Land in the Names of Trustees for the Company—Position of Company and Debenture-holders.

Q. 2381. A and B are the sole shareholders in and the sole directors of a private limited liability company formed for the purpose of developing estates, and buying and selling freehold and leasehold properties, and C and D are large debenture-holders of the company. Properties are often temporarily mortgaged. Many building societies and private mortgagees will not entertain a mortgage from a limited liability company, consequently properties are bought in the names of A and B with the company's money and regarded in the accounts as the company's properties, and are mortgaged by A or B. From the point of view of (*a*) the company and (*b*) the protection of the debenture-holders, should a deed of trust be executed each time, or is it sufficient that a resolution be passed either confirming that Blackacre has been bought in the name of A or B as nominee for the company or authorising that Blackacre should be so purchased? It is desired to minimise the legal expenses of many trust deeds a year, and also the stamp duty thereon.

A. So long as the company has sufficient evidence to establish the true position at any time (say, for example, in the insolvency of A and B) so as to insure the rights of the company and of the debenture-holders, the position, though doubtless irregular, does not seem to call for any special action, and is probably not uncommon. We doubt whether a resolution of the company, or of A and B as its directors, would bind A and B in their personal capacities. We quote the following from the 21st ed. of "Alpe's Law of Stamp Duties," p. 167: "An acknowledgment that an agreement was entered into by one person on behalf of another, if the agreement is one for the purchase of property, is, it is believed, in practice viewed as a declaration of trust and chargeable accordingly." The charge is 10s. Advantage might be taken of this ruling at a very slight expense on the occasion of each piece of property purchased. A printed form might be used and the extra 10s. is not a very serious addition to each transaction's cost.

Execution after Bankruptcy Notice.

Q. 2382. A obtains a final High Court judgment against B, and makes it the ground for issuing a bankruptcy notice against B, as he thinks such procedure will be the most effective way of obtaining payment of the judgment. Service of the bankruptcy notice on B and threats to proceed thereunder only produce, however, a small sum on account. Is there anything to prevent A (without giving any notice to anyone) from deciding not to proceed under the bankruptcy notice and, in lieu thereof, issuing execution under the judgment?

A. The Bankruptcy Act, 1914, s. 1 (*g*), enables a bankruptcy notice to be issued, provided execution has not been stayed. The creditor may, therefore, still proceed by issuing execution after a bankruptcy notice, as the court's power to stay execution does not arise, under s. 9 (1) of the above Act, until after presentation of a bankruptcy petition.

Distraint for Income Tax.

Q. 2383. With reference to the opinion expressed in The Solicitors' Journal, of 31st October, in reply to "Points in Practice," Question 2326, it is submitted that a point in r. VII 3 (*b*) has been overlooked. Protection is not given by that sub-section in a case where the arrears of tax ought to have been levied upon *and ultimately borne by* any former occupier. In the case referred to the previous occupier was a tenant and not the person ultimately liable for tax, and it is submitted that the present tenant is liable to be called upon to pay the arrears, and the provisions of r. VIII 7 would operate subject to r. VIII 1.

A. It is agreed that, reading the words in italics disjunctively (and not as being explanatory of "levied upon") the rules can bear the above interpretation.

Land Subject to Jointure Rent-charge—Death of Owner—Probate.

Q. 2384. A.B., in the year 1924, purchased a freehold estate from a vendor who was entitled in fee simple, subject to a jointure rent-charge, and in the conveyance the vendor covenanted to indemnify the purchaser against the rent-charge. A.B. died in 1931, having by his will appointed C.D. and E.F. executors and trustees thereof, and having given the whole of his real property to them upon trust for sale. In these circumstances can C.D. and E.F. obtain a general grant of probate, including the real estate purchased in 1924? In his lifetime A.B. could have sold and conveyed this estate as if it had not been Settled Land under the L.P. (Am.) Act, 1926, s. 1, but it does not appear that s. 22 of the Administration of Estates Act, 1925, has been affected by the Amendment Act. If C.D. and E.F. can swear that the land is not settled land and obtain a general grant of probate, they could no doubt make a good title under s. 37 (1) of the Administration of Estates Act, 1925. If the land is to be deemed settled land it will be necessary to appoint trustees of the settlement, consisting of the series of documents under which the vendor became entitled in fee simple, subject to the jointure rent-charge and the conveyance to A.B.

A. We are not aware of any rule of the Probate Registry dealing with this special case. If the jointure is still in existence the land is technically still settled land, and it appears

the proper procedure is to get a renunciation by the trustees of the settlement and the personal representative of the testator if the settlement was by will and if they were distinct from the trustees of the settlement, and then for A.B.'s executors to apply for grant including the settled land, the oath showing how the trustees and executors of the settlor (if settlement by will) were cleared off. As regards executors of the settlor, if settlement was by will, the registrar, on evidence of the facts by affidavit, may dispense with the clearing off of them under the directions given after the decision in *Bridgett and Hayes' Contract*.

Cost of Copy Will supplied to Small Legatee—INCIDENCE OF.

Q. 2385. Frequently after a funeral the beneficiaries ask for copies of the deceased's will to be supplied to them, even though they have heard the will read out and they know that they get only small legacies. In many cases the request is prompted merely by curiosity to see and remember what others are getting out of the estate. If the executors supply copies of the will in response to such requests, who is liable to pay for the copies—the deceased's estate or the beneficiaries concerned? If it is the latter, can the cost be properly charged against their legacies?

A. We express the opinion that the cost of such a copy cannot be charged properly against the deceased's estate, and must be met by the legatee requiring the copy (*In re Bosworth, Martin* v. *Lamb* (1889), 58 L.J. Ch. 432). We doubt whether the cost can legally be deducted from the legacy. Before complying with the request the executors are entitled to be indemnified against the expense (*In re Bosworth, ubi supra*). From a practical point of view, therefore, it can generally be arranged to deduct the cost from the legacy.

Husband and Wife Living Together in Wife's House—REPAIRS DONE AND OUTGOINGS PAID BY HUSBAND.

Q. 2386. In 1925 leasehold premises were purchased by the wife of A, a trader, out of her separate moneys, and in her name, as a joint residence for A and herself. A paid all outgoings—ground rent and rates and taxes. A also paid large sums for extensive repairs. Both continued in residence together until 1930, when the wife died intestate. A obtained administration and claims to be entitled to deduct from the gross value of his wife's estate the aggregate amount paid by him for outgoings and repairs. He contends that liability for his wife's maintenance does not extend to expenditure for the benefit of his wife's separate estate. The deductions for estate duty are not admitted by the Inland Revenue. Is A's claim tenable in law? References to statute or case law desired.

A. It is hardly to be expected that any direct authority dealing with this precise point can be quoted, as we cannot imagine such a claim ever having been seriously put forward without evidence of a contract in support of it. Obviously as this is not a case of a trustee spending his own money on his beneficiary's property, no equitable principle can arise. On the contrary money paid by a husband for the benefit of his wife is prima facie to be intended as a gift to her (see for example, *Dunbar* v. *Dunbar* [1909] 2 Ch. 639.) A, therefore, in order to succeed in his claim, must show that there was a common law liability which constituted his wife a debtor to him. It is, however, clear law that (apart from the relationship of husband and wife) no claim arises for work done or services rendered to another without request, and a voluntary payment of the debt of another without request gives no cause of action (see for instance *Johnson* v. *Royal Mail Co.* [1900] L.R. 3 C.P. 43, where the Lord Chancellor said: "I cannot understand how it can be asserted that it is part of the common law that where one person gets some advantage from the act of another a right of contribution towards the expense from that act arises on behalf of the person who has done it.") So, if one tenant in common spends money on repairs, otherwise than at the request of the other, he has no right to claim repayment of part: *Leigh* v. *Dickeson*, 15 Q.B.D. 60. Moreover the husband's common law liability extends to the supply of housing accommodation for his wife (see *Jetley* v. *Hill*, 1 Cab. and Ellis 239, and *Hunt* v. *de Blaquiere*, 7 L.J. (o.s.) C.P. 1908). It seems more than doubtful therefore whether in case of husband and wife a mere request by the wife to make the payments in respect of the house would make her liable to repay, as would be the case with a stranger. Even therefore, if the house was assessed to the wife, so that she was regarded as the occupier and so liable to the rates and taxes, and although the repairs may have been such as could have been enforced under the covenants in the lease and the wife was legally liable under covenant for the ground rent, the opinion must be given that, unless A can prove there was a definite contract with his wife that she would be liable to him for the various payments made, he has no claim whatever. *A fortiori* would such be the case, if A was regarded as tenant at will of his wife, of which the fact (if it were so) that he allowed himself to be assessed as occupier and still more if he returned himself as occupier to the registration officer, would be some evidence.

Necessity for Notice to Quit.

Q. 2387. In 1915 a shop and dwelling-house were let for three years. The tenant died in 1931 leaving no estate and no representation was obtained. His son who lived with him remains in possession, and thus is a statutory tenant (*Tickner* v. *Clifton* [1929] 1 K.B. 207). Is it considered possible to give the son statutory notice of increase of rent without giving notice to quit? If not, should notice to quit be served on the son as occupier?

A. The case quoted lays down that the member of the family is a statutory tenant upon the same terms and conditions as the father, and the fact that the son's statutory tenancy began with himself (as laid down in the same case) does not entitle him to notice to quit. The rent may therefore be increased by a statutory notice under the Act of 1923, s. 1 (1), without notice to quit.

Sale of Property subject to First and Second Mortgages—VACATION OF MORTGAGES BEFORE COMPLETION OR CONCURRENCE OF MORTGAGEES.

Q. 2388. A, owner in fee simple of a certain house, made two mortgages by way of legal charge in 1927; the first being to a building society registered under the Act of 1874, and the second to a company. A has now sold the house to B for a sum which is insufficient to discharge both mortgages. B's solicitor has no reason to doubt there will be any difficulty in satisfying the mortgagees as apparently they are agreeable to the sale, but, inasmuch as A derives no pecuniary benefit from the sale, B's solicitor is desirous of being advised as to the proper method of vesting the property in B in fee simple, free from the incumbrances. Should statutory receipts be endorsed on both mortgages (in case of the building society using the receipt prescribed by the Building Societies Act, 1874, as amended by L.P.A., 1925), and then a simple conveyance made by A to B in consideration of the purchase money, reciting A's seisin or should both or either of the mortgagees be made parties to the conveyance by A to B?

A. We do not think that B's solicitor has any option as to the form of the assurance to the purchaser, it being open to A to have the mortgages vacated before completion or to procure the concurrence of his mortgagees in the assurance to the purchaser. Either procedure will be satisfactory. If the mortgagees concur, both must concur. We should prefer the vacation of the mortgages as being the more simple course, but A will probably prefer to procure the concurrence of the mortgagees as this would avoid the payment of stamp duty on the vacation of the second mortgage.

Notes of Cases.

Judicial Committee of the Privy Council.

Assicurazioni Generali *v.* **Cotran.**

Lord Blanesburgh, Lord Darling and Lord Russell of Killowen. 27th November.

INSURANCE—LIFE POLICY—TURKISH SUBJECT—POLICY SUBJECT TO TREATY OF LAUSANNE—PAYMENT AT MATURITY IN PAPER FRANCS.

This was an appeal by Assicurazioni Generali, an insurance company, from a judgment of the Supreme Court of Palestine, dated the 3rd April, 1929. A policy of life insurance was issued by the appellant insurance company, then an Austrian company, on the 11th December, 1909, on the application of the respondent, Selim Cotran, and his wife, Matilde Cotran, who were Ottoman subjects domiciled at Acre, Palestine. The company by the policy: "Undertakes to pay the amount of gold francs 10,000 immediately on the death of one of the assured to the survivor . . ." The consideration for the insurance was the payment of a half-yearly premium of 257·66 francs. Mrs. Cotran died on the 7th July, 1925, and the company then proposed to pay the respondent in satisfaction of his claims under the policy the sum of 10,000 francs by cheque on Paris. Mr. Cotran thereupon began proceedings in the District Court of Jerusalem, claiming payment of the equivalent in Egyptian money of 10,000 gold francs. The insurance company claimed that by virtue of the treaty of peace with Turkey, which as from the 6th August, 1924, operated as part of the municipal law of Palestine, there was no obligation on them to pay 10,000 gold francs. In the District Court Mr. Cotran's claim was dismissed, and, on his appeal, the Supreme Court gave judgment for payment to him in gold francs. The insurance company now appealed.

Lord RUSSELL OF KILLOWEN, giving the judgment of the Board, said that the question was whether the treaty of Lausanne operated to relieve the insurance company from the obligation to pay gold francs as provided by the policy. To ascertain whether the Court of Appeal was right in its view that the treaty had no application because the insurance company was an Austrian company at the date of the policy and throughout the war, it was necessary to consider the relevant provisions of the treaty. The treaty of peace with Turkey was signed at Lausanne on the 24th July, 1923, by the allied powers, including Italy. It came into force on the 6th August, 1924. At that date Trieste (where the head office and control of the insurance company were situated) had become Italian territory by virtue of the treaty of St. Germain, which became operative on the 10th July, 1920. His lordship then referred to the relevant provision of the Treaty of Lausanne, para. 2 of the Annex to s. II, and said that their lordships were of opinion that the policy here in question became subject to and, on maturity, was governed by, the Treaty of Lausanne. It was manifest that the right to be paid francs gold had been taken away from the respondent.

Appeal allowed.

COUNSEL: *H. I. P. Hallett*, for the appellants; respondent not represented.

SOLICITORS: *William A. Crump & Son.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

House of Lords.

Bell *v.* **Lever Brothers, Ltd.** 15th December.

CONTRACT — MUTUAL MISTAKE — NON-DISCLOSURE OF MATERIAL FACTS—BREACHES OF DUTY—RESCISSION.

This was an appeal from the Court of Appeal affirming a decision of Wright, J.

The appellants, B and S, were in the service of the respondents, the Niger Company, as chairman and vice-chairman, and in 1929 the respondents negotiated with each of the appellants to give up his position for monetary compensation and the compensation, amounting respectively to £30,000 and £20,000, was paid, and the positions were given up. The respondents claimed repayment of those moneys on the ground that the contracts for the termination of the appellants' employment were made under a mistake of fact. The respondents' case was that the contracts were made in ignorance of the fact that the appellants had been guilty of breaches of contract which would have given the respondents the right to terminate the contracts without compensation and that such breaches of contract were not disclosed. On the findings of the jury Wright, J., gave judgment for the respondents, and the Court of Appeal affirmed his decision.

Lord ATKIN, in the course of his judgment, said that two points presented themselves for decision. One was as to mutual mistake, and the other was as to non-disclosure. On the first point, his Lordship came to the conclusion that the identity of the subject-matter was not destroyed by the mutual mistake, if any, of the parties. As to the second point, with regard to non-disclosure by B, one of the appellants, as to transactions or dealings on his own behalf, fraudulent concealment had been negatived by the jury, and the claim was now based on the contention that the appellant B owed a duty to the respondents to disclose his misconduct and that in default of disclosure the contract was voidable. Ordinarily the failure to disclose a material fact which might influence the mind of a prudent contractor did not give the right to avoid the contract. The principle of *caveat emptor* applied outside contracts of sale. There were certain contracts *uberrimæ fidei*, but he was aware of no authority which placed contracts of service within that limited class. It was said that it was a duty of the servant to disclose his past faults, but to imply such a duty would be a departure from the well-established usage of mankind. The result was that servants unfaithful in some of their work retained large compensation which some think they did not deserve. Nevertheless, it was more important that the principles of contract should be maintained than that a particular hardship should be redressed, and he saw no way of giving relief to the plaintiffs except by confiding to the courts loose powers of introducing terms into contracts which would only cause doubt and confusion where certainty was essential. He thought the appeal should be allowed.

Lord BLANESBURGH and Lord THANKERTON gave judgment to the same effect.

Lord WARRINGTON OF CLYFFE (in whose judgment Lord HAILSHAM concurred) differed.

COUNSEL: *Schiller*, K.C., *Pritt*, K.C., and *P. Vos*; *Sir John Simon*, K.C., *Stuart Bevan*, K.C., and *Wilfrid Lewis*.

SOLICITORS: *Birkbeck, Julius, Edwards & Co.*; *Pritchard, Englefield & Co.*, for *Simpson, North, Harley & Co.*, Liverpool.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* **Cravitz.**

Lord Hewart, C.J., Avory and Humphreys, JJ. 19th October.

CRIMINAL LAW—EVIDENCE OF ACCUSED—ATTENDANCE AT INDUSTRIAL SCHOOL—NOT NECESSARILY CONVICTED OF CRIME—CRIMINAL EVIDENCE ACT, 1898 (61 & 62 Vict., c. 36), s. 1 (*f*).

This was the appeal against conviction of one Cravitz, who was jointly indicted with D at the County of London Sessions for shop-breaking and larceny. They were also indicted under a second count for receiving stolen goods. They were both found guilty of receiving only and the present appellant was sentenced to eighteen months' imprisonment with hard labour. D's counsel at the trial elicited the information that the appellant was at school with D, and the appellant, in cross-examination, was asked: "Did you not go to the same

school, Hayes' Industrial School, together ?" The appellant agreed that he did, and it was then submitted that the question amounted to a breach of s. 1 (*f*) of the Criminal Evidence Act, 1898, which provides: "A person charged and called as a witness in pursuance of this Act shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with an offence other than that wherewith he is then charged, or is of bad character, unless . . ."

The COURT were of opinion that since a boy may be sent to an industrial school for various reasons, the questions put to the appellant did not necessarily convey to the jury that he had been previously convicted or had been charged with a crime. There had been no substantial miscarriage of justice, and the appeal would be dismissed.

COUNSEL: *G. St. J. Macdonald; Beaufoi Moore.*

SOLICITORS: *The Registrar of the Court of Criminal Appeal; the Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

NAMES OF CASES previously reported in current volume.

	PAGE.
Attorney-General for Quebec *v.* Attorney-General for Canada	10
Attorney-General *v.* Smethwick Corporation	29
City of London Insurance Co. Ltd., *In re*	29
Dampskibsselskabet Botnia A/S *v.* C. P. Bell & Co.	10
Greening *v.* Queen Anne's Bounty	10
Phillips, *In re*: Public Trustee *v.* Mayer	10

Rules and Orders.

THE BANKRUPTCY FEES (AMENDMENT NO. 1) ORDER, 1932. DATED JANUARY 1, 1932.

The Lord Chancellor and the Treasury in pursuance of the powers and authorities vested in them respectively by section 133 of the Bankruptcy Act, 1914,(*) and sections 2 and 3 of the Public Offices Fees Act, 1879,(†) do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require them, make sanction and consent to, the following Order:—

1. Fee No. 10 in Table A in the First Schedule to the Bankruptcy Fees Order, 1930,(‡) is hereby revoked and the following fee shall be substituted therefor—

"10. On an application for an order of discharge including the expense of gazetting the same, in respect of each debtor covered by the application ..	£1	10	0
And for each creditor to be notified ..	1	0	"

2. This Order may be cited as the Bankruptcy Fees (Amendment No. 1) Order, 1932, and shall come into operation on the 13th day of January, 1932, and the Bankruptcy Fees Order, 1930, as amended, shall have effect as further amended by this Order.

Dated the 1st day of January, 1932.

Sankey, C.

A. U. M. Hudson
Geoffrey H. Shakespeare } Lords Commissioners of His Majesty's Treasury.

(*) 4–5 G. 5. c. 59. (†) 42–3 V. c. 58. (‡) S.R. & O. 1930 (No. 604) p. 106.

THE MINISTRY OF HEALTH (RATE OF INTEREST) AMENDMENT ORDER, 1932, DATED JANUARY 5, 1932, MADE BY THE MINISTER OF HEALTH, WITH THE APPROVAL OF THE TREASURY, UNDER SECTION 5 OF THE HOUSING ACT, 1921 (11 & 12 GEO. 5. c. 19).

76,207.

The Minister of Health in pursuance of the powers conferred on him by section 5 of the Housing Act, 1921, and of all other powers enabling him in that behalf, with the approval of the Treasury hereby orders as follows:—

1. This order may be cited as the Ministry of Health (Rate of Interest) Amendment Order, 1932.

2. The rate of interest on advances made on or after the date of this order under section 1 of the Small Dwellings (Acquisition) Act, 1899,(*a*) shall be five and a half per cent. per annum and the provisions of the Ministry of Health (Rates of Interest) Order, 1921,(*b*) the Ministry of Health (Rates of Amendment Order, 1930,(*g*) the Ministry of Health (Rate of Interest) Amendment Order (No. 2), 1930,(*h*) and the Ministry of Health (Rate of Interest) Amendment Order, 1931,(*i*) Interest) Amendment Order (No. 2), 1922,(*c*) the Ministry of Health (Rate of Interest) Amendment Order, 1923,(*d*) the Ministry of Health (Rate of Interest) Amendment Order, 1926,(*e*) the Ministry of Health (Rate of Interest) Amendment Order, 1929,(*f*) the Ministry of Health (Rate of Interest) relating to the rate of interest on advances under that Act shall be modified and have effect accordingly.

Given under the official seal of the Minister of Health this fifth day of January nineteen hundred and thirty-two.

H. W. S. Francis,
Assistant Secretary, Ministry of Health.

We approve this Order,

Geoffrey H. Shakespeare,
A. U. M. Hudson,
Two of the Lords Commissioners of His Majesty's Treasury.

(*a*) 62–3 V. c. 44. (*b*) S.R. & O. 1921 (No. 1385) p. 300.
(*c*) S.R. & O. 1922 (No. 1326) p. 439. (*d*) S.R. & O. 1923 (No. 940) p. 362.
(*e*) S.R. & O. 1926 (No. 104) p. 633. (*f*) S.R. & O. 1929 (No. 1025) p. 500.
(*g*) S.R. & O. 1930 No. 301. (*h*) S.R. & O. 1930 (No. 1081) p. 618.
(*i*) S.R. & O. 1931, No. 979.

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Legal Notes and News.

Honours and Appointments.

Sir PERCY SIMMONS has been elected Chairman of the Justices for the St. Marylebone Division.

Mr. KEITH LAUDER, son of the clerk and solicitor, Southgate Urban District Council, has been appointed Assistant Solicitor to the Council.

Judge BARNARD LAILEY, K.C., who has for some years been the Judicial Chairman, was on Monday last appointed Chairman of the Hampshire Quarter Sessions, in succession to the late Sir William Portal, Bart.

In this column in last week's issue we regret the omission of the name of Major C. W. M. PRICE, who was Member of Parliament for Pembrokeshire from 1924-1929, and who is a solicitor practising at Milford Haven, upon whom was conferred the honour of Knighthood.

Professional Announcements.

(2s. per line.)

FRERE CHOLMELEY & CO., of 28, Lincoln's Inn Fields, W.C.2, have taken into partnership as from the 31st December, 1931, ARCHIBALD MALCOLM and SIDNEY ARTHUR PETTIFER. The firm's name remains unchanged.

Messrs. ELLIS & ELLIS & KIRBY, MILLETT & AYSCOUGH, of 2 & 3, The Sanctuary, Westminster, have taken into partnership Mr. ROMILLY SOUTHWOOD OUVRY, son of Mr. E. C. Ouvry. The name of the firm will remain unchanged—ELLIS & ELLIS & KIRBY, MILLETT & AYSCOUGH.

Messrs. VIGERS & CO., Chartered Surveyors, of 4, Frederick's-place, Old Jewry, E.C.2, have admitted into partnership Mr. E. R. CANHAM, F.S.I., and Mr. W. E. A. BULL, P.A.S.I., as from 1st January, 1932. The business will be carried on at Frederick's-place under the same name, and Mr. Leslie R. Vigers, P.P.S.I., Mr. A. A. Vigers, F.S.I., and Mr. G. L. Vigers, F.S.I., remain partners in the firm.

Wills and Bequests.

Mr. George Frederick Von Dommer, solicitor, of Newcastle-upon-Tyne, left £33,747, with net personalty £32,597.

Mr. John M. Watkins, of Usk, solicitor, left estate of the value of £13,525, with net personalty £9,013.

Mr. H. Arthur, of Irlams-o'-th'-Height, solicitor, left estate of the value of £14,320, with net personalty £6,993.

Alfred J. O. Stutfield, Totnes, solicitor (net personalty £5,513), £5,654.

Thomas H. Willett, Tunbridge Wells, solicitor (net personalty £3,756), £7,679.

THE GENERAL COUNCIL OF THE BAR.

The annual general meeting of the Bar will be held in The Inner Temple Hall, on Monday, the 18th January, 1932, at 4.15 o'clock. The Attorney-General will preside. Any member of the Bar shall be at liberty to bring forward for discussion at the above meeting any resolution, provided that notice thereof shall have been given in writing to the Secretary of the Council not less than seven clear days before the day of meeting, and that in the opinion of the Executive Committee of the Council such resolution is a matter of general interest to the Bar.

DATES OF WINTER ASSIZES.

The following days and places have been fixed for holding the Winter Assizes, 1932 :—

Oxford Circuit (Roche, J., and Finlay, J.).—12th January, Reading; 18th January, Oxford; 23rd January, Worcester; 28th January, Gloucester; 4th February, Monmouth; 10th February, Hereford; 15th February, Shrewsbury; 22nd February, Stafford.

South Wales Circuit (Acton, J., and Branson, J.).—12th January, Haverfordwest; 16th January, Lampeter; 20th January, Carmarthen; 27th January, Brecon; 30th January, Presteign; 9th February, Cardiff.

Western Circuit (Rowlatt, J., and Talbot, J.).—14th January, Devizes; 19th January, Dorchester; 25th January, Taunton; 28th January, Bodmin; 2nd February, Exeter; 8th February, Bristol; 15th February, Winchester.

Midland Circuit (Horridge, J.).—12th January, Aylesbury; 16th January, Bedford; 21st January, Northampton; 27th January, Leicester; 2nd February, Oakham; 3rd February, Lincoln; 10th February, Nottingham; 17th February, Derby. (Wright, J.).—23rd February, Warwick. (Finlay, J., and Wright, J.).—2nd March, Birmingham.

Northern Circuit (Swift, J., and Macnaghten, J.).—13th January, Appleby; 15th January, Carlisle; 19th January, Lancaster; 25th January, Liverpool; 15th February, Manchester.

North Wales (Acton, J., and Branson, J.).—11th January, Welshpool; 14th January, Dolgelley; 18th January, Carnarvon; 23rd January, Beaumaris; 26th January, Ruthin; 30th January, Mold; 2nd February, Chester.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Non-Witness.	MR. JUSTICE MAUGHAM. Witness. Part II.
M'nd'y Jan. 18	Mr. Andrews	Mr. Blaker	Mr. Ritchie	Mr.*More
Tuesday .. 19	Jones	More	Andrews	*Ritchie
Wednesday 20	Ritchie	Hicks Beach	More	*Andrews
Thursday . 21	Blaker	Andrews	Ritchie	More
Friday 22	More	Jones	Andrews	Ritchie
Saturday .. 23	Hicks Beach	Ritchie	More	Andrews
	GROUP I. MR. JUSTICE BENNETT. Witness. Part I.	MR. JUSTICE CLAUSON. Witness. Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part I.	MR. JUSTICE FARWELL. Non-Witness.
M'nd'y Jan. 18	Mr.*Andrews	Mr.*Jones	Mr. Blaker	Mr. Hicks Beach
Tuesday .. 19	More	*Hicks Beach	*Jones	Blaker
Wednesday. 20	*Ritchie	*Blaker	Hicks Beach	Jones
Thursday . 21	Andrews	Jones	*Blaker	Hicks Beach
Friday 22	*More	*Hicks Beach	Jones	Blaker
Saturday .. 23	Ritchie	Blaker	Hicks Beach	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (20th September, 1931) 6%. Next London Stock Exchange Settlement Thursday, 21st January, 1932.

	Middle Price 13 Jan. 1932.	Flat Interest Yield.			Approximate Yield with redemption		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	84½xd	4	14	8	—		
Consols 2½%	55	4	10	11	—		
War Loan 5% 1929-47	98	5	2	0	—		
War Loan 4½% 1925-45	94	4	15	9	5	2	0
Funding 4% Loan 1960-90	86½	4	12	6	4	13	6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	92	4	7	0	4	9	0
Conversion 5% Loan 1944-64	100¼	4	19	9	4	19	6
Conversion 4½% Loan 1940-44	95	4	14	9	5	1	0
Conversion 3½% Loan 1961	75½	4	12	9	—		
Local Loans 3% Stock 1912 or after	62½	4	16	0	—		
Bank Stock	240½	4	19	7	—		
India 4½% 1950-55	72	6	5	0	—		
India 3½%	55	6	7	3	—		
India 3%	47	6	7	8	—		
Sudan 4½% 1939-73	88½xd	5	1	8	5	4	0
Sudan 4% 1974	81	4	18	9	5	2	0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	82	3	13	2	4	5	9
Colonial Securities.							
Canada 3% 1938	86	3	9	9	5	12	3
Cape of Good Hope 4% 1916-36	90½	4	8	5	6	4	10
Cape of Good Hope 3½% 1929-49	74½	4	14	0	5	16	3
Ceylon 5% 1960-70	93½xd	5	6	11	5	8	0
Commonwealth of Australia 5% 1945-75	81	6	3	5	6	5	6
Gold Coast 4½% 1956	89½	5	0	7	5	5	6
Jamaica 4½% 1941-71	89½	5	0	7	5	2	6
Natal 4% 1937	89½	4	9	5	6	15	0
New South Wales 4½% 1935-45	71½	6	5	10	6	12	0
New South Wales 5% 1945-65	75½	6	12	5	6	17	6
New Zealand 4½% 1945	80½	5	11	10	6	15	0
New Zealand 5% 1946	85½	5	17	0	6	12	6
Nigeria 5% 1950-60	93½xd	5	6	11	5	9	0
Queensland 5% 1940-60	76½	6	10	9	6	17	6
South Africa 5% 1945-75	92	5	8	8	5	10	0
South Australia 5% 1945-75	75½	6	12	5	6	15	0
Tasmania 5% 1945-75	74½xd	6	14	3	6	17	3
Victoria 5% 1945-75	77½	6	9	0	6	13	0
West Australia 5% 1945-75	75½xd	6	12	5	6	15	0
The prices of Stocks are in many cases nominal and dealings often a matter of negotiation.							
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	60	5	0	0	—		
Birmingham 5% 1946-56	100	5	0	0	5	0	0
Cardiff 5% 1945-65	98½	5	1	6	5	2	3
Croydon 3% 1940-60	68½	4	7	7	5	2	6
Hastings 5% 1947-67	98	5	2	0	5	2	0
Hull 3½% 1925-55	75xd	4	13	4	5	7	3
Liverpool 3½% Redeemable by agreement with holders or by purchase	71½	4	17	11	—		
London City 2½% Consolidated Stock after 1920 at option of Corporation	51	4	18	0	—		
London City 3% Consolidated Stock after 1920 at option of Corporation	62	4	16	9	—		
Metropolitan Water Board 3% "A" 1963-2003	61½	4	17	7	—		
Do. do. 3% "B" 1934-2003	63	4	15	3	—		
Middlesex C.C. 3½% 1927-47	84xd	4	3	4	5	0	0
Newcastle 3½% Irredeemable	70	5	0	0	—		
Nottingham 3% Irredeemable	61	4	18	4	—		
Stockton 5% 1946-66	97½xd	5	2	7	5	3	3
Wolverhampton 5% 1946-56	98½	5	1	6	5	2	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	74xd	5	8	1	—		
Gt. Western Railway 5% Rent Charge	88xd	5	13	8	—		
Gt. Western Rly. 5% Preference	71½	6	19	10	—		
L. & N.E. Rly. 4% Debenture	67½	5	18	6	—		
L. & N.E. Rly. 4% 1st Guaranteed	62⅔	6	8	0	—		
L. & N.E. Rly. 4% 1st Preference	47⅔	8	8	5	—		
L. Mid. & Scot. Rly. 4% Debenture	70½	5	13	6	—		
L. Mid. & Scot. Rly. 4% Guaranteed	62⅔	6	8	0	—		
L. Mid. & Scot. Rly. 4% Preference	47⅔	8	8	5	—		
Southern Railway 4% Debenture	71½	5	11	11	—		
Southern Railway 5% Guaranteed	85	5	17	8	—		
Southern Railway 5% Preference	65	7	13	10	—		

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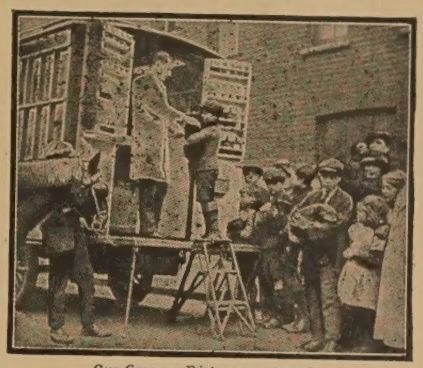

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